

Chapter 14

CIVIL SERVICE*

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***Editor's note**—Section 7 of Ord. No. 96-1088, adopted Oct. 23, 1996, read as follows:

"That the provisions of article III of chapter 14 of the Code of Ordinances, Houston, Texas, as amended in section 2 of this ordinance, are subject to amendment or repeal at any time and payment of benefits thereunder is subject to the appropriation or allocation of funds for that purpose by the city council. No provision of this ordinance shall be construed to create a vested right of compensation for sick leave benefits or, where applicable, for termination payments."

Charter reference—Civil services generally, Art. Va.

Cross references—Ethics and financial disclosure, Ch. 18; police department, § 34-21 et seq.; fire department, § 34-46 et seq.; investigation of employee misconduct (police officers and firefighters), § 34-160 et seq.

ARTICLE I. IN GENERAL

Sec. 14-1. Commission members; appointments, terms, vacancies; organization; officers.

(a) There are hereby re-established three civil service commission positions. Such positions shall be separately designated as "Position One," "Position Two," and "Position Three."

- (1) The mayor, when making an appointment to the civil service commission, and the city council, when confirming such appointment, shall specify the position for which such appointment or confirmation is made.
- (2) The initial term of each position as hereby re-established shall commence on June 15, 1983. The initial term of Position One shall expire on June 14, 1986; the initial term of Position Two shall expire on June 14, 1985; and the initial term of Position Three shall expire on June 14, 1984.
- (3) Following the aforesaid initial terms, the term of office for each position on the civil service commission shall be three years, to commence on June 15 and to expire on June 14.
- (4) Any appointment to a vacancy on the commission caused by death, resignation or otherwise, or caused by the failure of an appointee to qualify within ten days after appointment, shall be for the unexpired term of the deceased or retiring member or of the appointee failing to qualify.

(b) No sooner than June 15, and no later than June 30 of each year, the members of the commission shall meet to organize for the transaction of business. At such organizational meeting, the members shall take the constitutional oath of office and shall elect one member as chairman, and one member as vice-chairman.

- (1) It shall be the duty of the chairman to preside at all meetings of the commission; it shall be the duty of the vice-chairman to preside at such meetings in the absence of the chairman.

- (2) The chairman and vice-chairman each shall be elected for a period of one year or until a successor is elected.

- (3) The numerical positions established in subsection (a) of this section are for identification purposes only, and shall bear no relation whatsoever to the chairmanship or vice-chairmanship of the commission.

(c) The mayor, subject to confirmation by city council, may appoint an alternate for each designated position on the civil service commission. Each alternate shall serve only when the regular member of the civil service commission in his position is absent and unable to attend meetings and perform commission duties for any reason. Alternates must have the same qualifications as regular members of the civil service commission and shall have all the powers and duties of a regular member but only when acting in the regular member's absence. An alternate shall be empowered to act as a regular member whenever the regular member notifies the secretary of the commission that the regular member is unable to attend a meeting of the commission or when the secretary of the commission is unable to secure the attendance of the regular member. The period of time during which an alternate may serve on the civil service commission shall expire at the end of the term of office of the regular member for which he serves as an alternate. An alternate shall not serve in any proceeding under Chapter 143 of the Local Government Code. (Code 1968, § 12-1; Ord. No. 83-1140, § 1, 7-26-83; Ord. No. 95-1, § 1, 1-4-95)

Charter reference—Civil service commission created, Art. Va, § 1.

Sec. 14-1.1. Human resources department—Established.

The human resources department, formerly known as the department of personnel and originally established as and formerly known as the department of civil service, is hereby continued. To the extent that this Code or any other ordinance or any motion, resolution, contract or other document devolves duties upon the former department of personnel or department of civil service or upon the employees or director thereof, then such

references shall be construed to mean the human resources department or the employees or director thereof, respectively.

(Code 1968, § 12-1.1; Ord. No. 82-1594, § 1, 9-29-82; Ord. No. 96-1290, § 2, 12-4-96)

Sec. 14-2. Same—Director.

(a) The office of human resources director, formerly known as the director of the department of personnel and originally established as and formerly known as the director of civil service, is hereby continued. The director shall be appointed by the mayor, with the approval of the city council, shall be over 21 years of age, and shall receive such salary as the city council may allow. Before entering upon the discharge of the duties of his office, the director shall take the constitutional oath of office, and, if the mayor and council deem it advisable, he may be required to give bond in such sum and with such sureties and such conditions as the mayor may direct.

(b) It shall be the responsibility of the director to keep the minutes of the meetings and proceedings and all the books, records, etc., of the civil service commission. Such director shall be the secretary and the chief examiner for such commission, and as such shall perform the duties provided in the rules and regulations of such commission. He shall perform all such other duties as are now or may be hereafter imposed upon him by the civil service commission or the mayor and council.

(c) It shall be the responsibility of the director to supervise and administer the city's employee benefit programs, including but not limited to the city's pension programs (excluding those duties required to be performed by state law by the city treasurer), health benefits, long term disability, life insurance, sick and vacation, deferred compensation and to serve as the administrator of the city's "125 Plan."

(Code 1968, § 12-2; Ord. No. 82-1594, § 1, 9-29-82; Ord. No. 88-1312, § 1, 8-3-88; Ord. No. 96-1290, § 3, 12-4-96)

Sec. 14-3. Duty of commission to prepare and submit rules and regulations.

It shall be the duty of the civil service commission to prepare, adopt and submit, as needed, to

the city council for its approval such rules and regulations for the proper conduct of its business in carrying out the purpose of the Charter, and thereafter such amendments, alterations and changes of such rules and regulations as it may find necessary and expedient.

(Code 1968, § 12-3)

Charter reference—Rules of commission, Art. Va, §§ 2, 4.

Cross reference—Officers and employees generally, § 2-21 et seq.

Sec. 14-4. Classification of offices and positions.

It shall be the duty of the civil service commission to classify all of the offices of, and places or positions of employment in the service of the city with reference to the examinations provided for in the Charter, in this chapter and in the rules and regulations of the civil service commission, except those exempt from civil service under the Charter. The offices, places and positions so classified shall constitute the classified civil service of the city, and no appointment, employment, promotion or reinstatement to any position, office or place shall be made except in accordance with the Charter, this chapter and the rules and regulations of the civil service commission.

(Code 1968, § 12-4)

Charter reference—Duty to classify employees, Art. Va, § 2.

Sec. 14-5. Examination and minimum age of applicants; exclusion of applicants likely to impair service.

(a) It shall be the duty of the civil service commission to provide that all applicants for office, places or positions in such classified civil service shall be subject to examination, either written, oral or unassembled, which shall be public, competitive and free to the citizens of the United States of America, with specified limitations as to residence, age, health, habits and moral character; provided, however, that the minimum age of applicants for original employment in such classified civil service shall be 18 years and provided, further, that any applicant whose presence in the public service would likely create friction among the employees thereof and thereby impair such service shall be excluded therefrom. Such examinations shall be practical in their

nature and character and shall relate to those matters which will fairly test the relative capacity of the person examined to discharge the duties of the office, position or place to which he seeks to be appointed. No question in any examination shall relate to political or religious opinions or affiliations. The commission shall have direct charge and control of all examinations of whatsoever character.

(b) No applicant shall be entitled to take any examination hereinabove provided for unless the applicant shall have filed with the human resources director his application prior to the date of examination.

(Code 1968, § 12-5; Ord. No. 96-1290, § 4, 12-4-96)

Sec. 14-6. Appointments, promotions, etc., to be made in accordance with Charter, chapter and rules and regulations of commission.

Appointments, employments, promotions and reinstatements in the classified civil service of the city shall be made only in accordance with the provisions of the Charter, this chapter and the rules and regulations of the civil service commission, and no officer or employee of the city having the power of appointment, employment, promotion or reinstatement of persons to offices, places or positions in such classified civil service shall appoint, employ, promote or reinstate any person to or in any office, employment, position or place in such service except in accordance with the Charter, this chapter and the rules and regulations of the civil service commission.

(Code 1968, § 12-6)

Sec. 14-7. Procedure when vacancy exists; suspension of employees.

When any office, employment, place or position in the classified service is vacant, which is desired to be filled, the mayor or the director of the department shall notify the civil service commission that a certification is requested, and the human resources director shall certify to the department director concerned the names of the three persons standing highest on the eligible list or register for the class and grade to which such office, employment, place or position belongs, and

the department director concerned shall select one of the three persons certified. Such appointment or employment from eligible lists derived from the original entrance examinations shall be on probation as provided by the Charter and rules and regulations of the commission, and such appointees shall not be removed or dismissed except as provided therein; provided, that nothing herein shall prevent the director of any department or office from temporarily suspending officers or employees for disciplinary purposes, for reasonable periods, not exceeding 15 days. It shall be the duty of the mayor to indefinitely suspend employees upon the recommendation of the respective department director. The commission shall be notified of any such suspension immediately and may, at its discretion or upon request of the mayor, investigate same and determine whether just cause therefor exists.

(Code 1968, § 12-7; Ord. No. 96-1290, § 5, 12-4-96; Ord. No. 05-91, §§ 1, 6, 1-25-05)

Charter reference—Suspension of employees, Art. Va, § 3.

Sec. 14-8. Transfers from one department to another.

The civil service commission shall have the power to so amend its rules that any employee in the classified service in the city may be transferred by such commission from one department to another, for the good of the service, provided such transfer is satisfactory to the director of the department to which the employee is transferred, and to the director of the department from which he is transferred.

(Code 1968, § 12-8; Ord. No. 05-91, § 6, 1-25-05)

Sec. 14-9. Duty of city officers and employees to assist commission.

It shall be the duty of all officers and employees of the city to aid and assist the civil service commission, and the members and officers and employees thereof, in all proper ways in carrying out the Charter provisions, this chapter and the rules and regulations of the commission, and it shall be an offense for any such officer or employee to willfully fail or refuse so to aid and assist, or to willfully hinder, obstruct or delay the civil service commission, or the members, officers

or employees thereof, in any manner in carrying out such Charter provisions, this chapter and such rules and regulations.

(Code 1968, § 12-9)

Sec. 14-10. Suspension of provisions requiring competition.

When an office, employment, place or position in the classified service, in which peculiar and exceptional qualifications of a scientific, professional or educational character are required, is vacant, upon satisfactory evidence that, for special reasons, competition in such special case is impracticable, and that the position, etc., can be best filled by the selection of some designated person of high and recognized attainments in such qualities, the commission may suspend all provisions requiring competition in such case, but no such suspension shall be general in its application to such place.

(Code 1968, § 12-10)

Sec. 14-11. Offenses in regard to examinations.

No person or officer or employee shall willfully or corruptly, by himself or in cooperation with one or more other persons, defeat, deceive or obstruct any person in respect to his right of examination, or corruptly or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, or aid in so doing, or willfully or corruptly make any false representation concerning the same or concerning the person examined, or willfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, being appointed, employed, promoted or reinstated.

(Code 1968, § 12-11)

Sec. 14-12. Hearings and investigations by commission.

The civil service commission may hold hearings concerning all matters touching the enforcement and effect of the Charter provisions for civil service, this chapter and the rules and regulations of such commission concerning the action of

any officer or employee of the city in respect to the execution of such Charter provision, this chapter or the rules and regulations of the commission; and in all cases of investigation under the preceding provision, or of an appeal of an officer or employee in the classified service from the action of any officer, director of department or employee of the city removing, discharging or finally suspending him from his office or employment, the commission, for the purpose of holding such hearing, investigation or inquiry, shall have the power to take testimony, administer oaths and affirmations, subpoena and require the attendance of witnesses and the production of books and papers pertinent thereto, and to examine such witnesses, books and papers, and it shall be the duty of all persons to obey such subpoenas, produce such books, records and papers, and to submit to examination and give their testimony, in all cases where such testimony, evidence, etc., could be required in a court of competent jurisdiction.

(Code 1968, § 12-12; Ord. No. 05-91, § 6, 1-25-05)

Sec. 14-13. Compiling, checking, certifying and correcting payrolls.

(a) It shall be the duty of every department director to compile all payrolls as promptly as possible, and to deliver same to the office of the civil service commission in good order, properly signed and ready for the city controller. It shall also be the duty of each department to furnish one employee to deliver such payrolls, which employee shall assist the civil service commission in the checking of that department's payroll at the time same is delivered.

(b) It shall be the duty of the civil service commission to check all payrolls to determine the legality of employment. Each item shall conform to the civil service records.

(c) Payrolls checked under this section shall be certified in writing by the human resources director and, when checked by another employee of the commission, shall bear the initials of the employee checking the same.

(d) After payrolls have been checked and certified by the commission, they shall be delivered immediately to the city controller.

(e) When items on any payroll are found to be incorrect and are red-lined, the same shall be corrected by the department responsible before the payroll is certified by the commission. No payroll shall be honored by the city controller which has not been first checked and found correct by the commission.

(f) It shall be the duty of the civil service commission to notify the director of any city department if any irregularity, mistake or error is found in the names or in the amount of compensation on any payroll, and to refuse to certify to the correctness of such payroll until the mistake or error is rectified. All directors of departments, when notified of such irregularity or error, by telephone or otherwise, shall at once rectify same, in order to facilitate the work of certifying to the correctness of any such payrolls.

(Code 1968, § 12-13; Ord. No. 96-1290, § 6, 12-4-96; Ord. No. 05-91, §§ 1, 6, 1-25-05)

Sec. 14-14. Salaries and wages not to be approved or paid for improper employment.

(a) The city controller shall not approve the payment of, or be in any manner concerned in paying any salary or wages to any person for services as an officer or employee of the city unless such person is occupying an office or place of employment according to the provisions of the Charter and ordinances of the city and is entitled to payment therefor.

(b) No paymaster, treasurer or other officer or agent of the city shall willfully pay, or be in any manner concerned in paying any person any salary or wages for services as an officer or employee of the city, unless such person is occupying an office or place of employment according to the provisions of the Charter and ordinances of the city and is entitled to payment therefor.

(Code 1968, § 12-14)

Sec. 14-15. Responsibility for irregularities or mistakes in payrolls.

It is the object of this article to hold responsible the directors of departments furnishing the pay-

rolls for all irregularities, mistakes and incorrectness appearing in the amount of compensation set opposite each name on each payroll.

(Code 1968, § 12-15)

Sec. 14-16. Violation of Charter, this chapter or rules and regulations.

(a) Whenever any person, officer or employee of the city has any positive duty imposed upon him, or any person or any officer or employee of the city is prohibited from the doing of any act by the Charter provisions for civil service, by this chapter or by the rules and regulations of the civil service commission, now or hereafter adopted and approved by the city council, and filed in the office of the city secretary, a willful failure, refusal or neglect to perform such duty, or the willful doing of any act prohibited, shall constitute an offense, and the officer or employee or person convicted thereof shall be punished as provided by section 1-6 of this Code.

(b) If any person, officer or employee shall be convicted under subsection (a) above, any office, place or position which he may hold with the city shall, by force of such conviction, be rendered vacant, and such person, officer or employee shall be incapable of holding any appointive office, or any office, place or position in the classified service of the city.

(Code 1968, § 12-16; Ord. No. 92-1449, § 30, 11-4-92)

Charter reference—Penalty for ordinance violation, Art. II, § 12.

State law references—Assessment of fines against corporations, § 16-76; payment of fines, § 16-78; credit against fines for incarceration, § 35-6 et seq.

Sec. 14-17. Soliciting compensation or offering compensation to hasten an employee's retirement or resignation.

(a) A city employee commits an offense if the city employee pays or offers to pay anything of value to another city employee with the intent to hasten the retirement or resignation of the other city employee in order to gain a promotion in rank, classification or salary or an opportunity therefor.

(b) A city employee commits an offense if the city employee solicits or accepts anything of value from another city employee upon the representation that such payment will hasten the retirement or resignation of the city employee making the solicitation or accepting the payment in order to gain a promotion in rank, classification or salary for the city employee solicited or making the payment or an opportunity therefor.

(c) The term "city employee" as used in this section includes any person employed by the city at the time of the offense whether holding a position that is classified under the Municipal Civil Service System created pursuant to Article Va of the City Charter, a position that is classified under the Firemen's and Policemen's Civil Service System created pursuant to Article 1269m, Tex. Rev. Civ. Stat. or a position that is not classified.

(d) Any person who violates this section shall, upon conviction, be punished by a fine of exactly \$500.00.
(Ord. No. 85-837, § 1, 6-5-85; Ord. No. 92-1449, § 31, 11-4-92)

Sec. 14-18. Creation of § 401(a) plan authorized.

(a) This section applies to any employee of the city, other than a police officer or fire fighter classified under Chapter 143 of the Texas Local Government Code, who upon termination of city employment is entitled to a combined gross benefit amount exceeding \$5,000.00 under section 14-170 and/or article III of this chapter for accumulated but unused vacation leave and sick leave benefits. This section shall not be applicable if the termination results from the death of an active city employee.

(b) City council hereby authorizes the establishment of a retirement savings plan under 26 U.S.C. § 401(a) and other applicable provisions of federal income tax laws and regulations. The plan shall be as established and amended from time to time by ordinance of the city, and it shall be administered by a third party administrator retained from time to time by contract with the city, as authorized by ordinance.

(c) Notwithstanding any provision of section 14-170 or article III of this chapter to the contrary, any terminating employee to whom this section applies shall forfeit his right to ordinary cash compensation for a portion of the combined gross termination benefit amount otherwise payable under section 14-170 and/or article III of this chapter that is equal to the lesser of: (1) the combined gross termination benefit amount, or (2) the amount of any applicable contribution limit for the plan as established by federal income tax laws and regulations. The amount so forfeited shall be allocated to an account in the name of the employee within the plan established under subsection (b).

(Ord. No. 03-923, § 5, 10-1-03)

Secs. 14-19—14-26. Reserved.

ARTICLE II. RULES*

DIVISION 1. RULE 1. DEFINITIONS

Sec. 14-27. Enumeration.

The following words and phrases when they appear in these rules and regulations shall have these meanings unless otherwise clearly indicated in the text:

Accumulated time. Days and fractions thereof which are credited to an employee's vacation or sick allowance and gained through length of service with the city.

Active duty. The actual performance of work or duties prescribed by ordinance, or the actual performance of work or duties assigned by the supervisor or department director.

Allocate (allocation). Official determination of the class and pay level in which a position in the classified service is deemed to exist.

Appeal. A request in writing by an employee of the city addressed to and filed with the civil service commission, in the manner and within the time provided by the Charter and these rules, seeking an investigation, review or hear-

***Charter reference**—Civil service commission rules, Art. Va, §§ 2, 4.

ing of facts therein represented to constitute a deprivation or impairment of rights vested in such employee as a member of the classified service.

Appointee. An employee of the city who is not an elected official nor one working on a contract basis.

Appointing authority. The mayor.

Appointment. The designation of a person by the appointing authority to become an employee in a position.

Article Va. Article Va of the Charter of the city, which creates civil service.

Budgetary reasons. Generally assigned in connection with releases, suspensions, or terminations, when available funds for a department, division or section, or project are depleted, withdrawn by the proper authorities, or when expected revenues fail to materialize.

Certification. A written statement which advises of confirmation of conditions, individuals or positions by the constituted authority or authorities.

Charter. Charter of the city.

Chief examiner. The director of the department of civil service.

Civil service employee. All city employees embraced within the classifications recognized by the commission and not exempted by the Charter.

Civil service staff. The employees in the offices of the commission.

Class. A group of positions which, having common characteristics or similar educational and general qualification requirements or encompassing positions sufficiently alike as to character of duties and responsibilities, warrant for the group essentially the same treatment for all civil service purposes; as, "the engineering class," "the skilled labor class," etc.

Classification. The title of an individual position in the classified service; also the title of an individual employee in the service.

Classification plan. Orderly arrangement of positions into separate and distinct classes so

that each class will contain those positions which involve similar duties, responsibilities, and qualification requirements.

Classified (position—service). All positions and their titles which have been created by council and are under civil service.

Commission. The civil service commission of the city.

Compensation plan. Schedule of salaries or salary ranges established by ordinance for the several classes of positions in the service of the city; the provisions whereby all positions of a given classification will be paid either the same salary or within the same salary range.

Council. The city council of the city.

Department director. Each person appointed as a department director by the mayor and confirmed by the council to assume the administrative duties of the various departments of the city. For purposes of administering this article only, each person appointed by the mayor as the director or head of the division for each of the divisions of the mayor's office which is limited to each of the following (311, Citizens Assistance Office, Affirmative Action (including the Office of Disabilities and One Stop Business Center), 911, Houston Emergency Center) shall also be considered a "department director."

Demotion. A change in the employment status of a civil service employee to a position of less responsibility or lower classification or salary range.

Director. The human resources director.

Discharge. Act of dispensing with, terminating the services of, or dismissing an employee.

Disciplinary (action—measure). A penalty imposed upon a civil service employee by the legally constituted authority.

Eligible (eligibility). One whose name is placed upon either an employment, re-employment, or promotional list for a given class or classification after fulfilling the requirements therefor; attainment by an applicant, after passing the

prescribed tests and fulfilling the qualifications, of the right to be certified as a prospective incumbent of a position.

Employment list (same as an eligibility list). Names arranged in order of merit, of persons who have passed suitable tests and possess the necessary qualifications and who are entitled to be certified for original appointment under the provisions of article Va and these rules.

Full-time employees. Those employees who work full days or full shifts regularly week after week throughout the year.

He (she). Use of the masculine noun or pronoun shall be held to include the feminine; use of the singular shall be held to include the plural and conversely.

Hearing. A session of the commission, following notice to the interested party or parties, held for the purpose of receiving evidence and thereafter reaching a decision with respect to matters or controversies appropriately submitted to it for determination.

Noncivil service employees. Those not under civil service as elsewhere defined.

Original appointment. Authorization for an eligible to begin work at a stated time and with a specific title and salary; such eligible shall not have previously worked for the city.

Part-time employees. Employees of the city who normally work less than an eight hour day or a 40-hour week.

Permanent (position, employee, employment). A position requiring full-time regular employment which has reasonable expectancy of continuing indefinitely; an employee occupying such a position and who has fulfilled the required probationary period of one year in a civil service position; appointment to such a position of an eligible who has reasonable expectancy of permanence even though his probationary period may not have ended, this as distinguished from temporary employment, emergency employment, etc., where in the latter cases a limited term of employment was contemplated when either the position was created or the appointment was made.

Probationary employee. An employee who has not completed his first year, after original appointment, in a civil service position, or who has not completed the necessary six months if in a position to which he has been promoted.

Probationary period. Length of time during which an employee is on trial and is expected to prove his complete fitness for his position.

Promotion. A change in the employment status of a civil service employee to a position of more responsibility or higher classification or salary.

Promotional examination. All tests of fitness, separately or taken together, and restricted to classified employees, for determining the eligibility of applicants for promotion.

Reappointment. Authorization for a former employee to resume city employment, usually the position he last held but also any similar position, which appointment of itself (without the approval of the commission then given) does not restore seniority formerly held by such appointee.

Reassignment of duties. Result of changing by a supervisor, section head, division head or department director of an employee's duties or responsibilities either gradually or suddenly whereby these duties or responsibilities then vary substantially from those in the statement of duties last given for that position.

Reclassification. Change in title of a position; also change in title of an employee either through promotion, demotion or transfer.

Reemployment. (See reappointment).

Reemployment list. Names of persons, arranged in the order prescribed by these rules, who formerly occupied classified positions in the classified service and are entitled to certification to the appointing authority for reappointment.

Salary range. The maximum and minimum amounts fixed by the council within which an employee's specific salary may be determined.

Service ratings. The prescribed methods for determining the varying degrees of efficiency, production, capacity and the general worth of a civil service employee.

Supervising authority. An employee who is charged with the responsibility of overseeing the work of one or more other employees, usually a department director but may also be a division head, section head, foreman or other designated employee.

Suspension. Period of time during which an employee, through disciplinary action of a superior, is forbidden to work and is denied salary during such period.

Test of fitness. Means or measures, which may include separately or collectively written or oral examinations and medical examinations as performed by designated examining physicians.

Title. The designation given to a position; also the designation of an incumbent of a position in the classified service.

(Code 1968, § 12-27; Ord. No. 96-1290, § 7, 12-4-96; Ord. No. 05-91, §§ 1, 7, 1-25-05)

Sec. 14-28. Task system employees.

(a) Upon the request of the department director of the department in which they are employed, permanent employees of the city may be designated by order of the commission as "task system employees." Requests to the commission for such designations shall be made by the department director who shall demonstrate to the commission each of the following:

- (1) The identity of classifications or positions of employment requested to be designated for task system employees.
- (2) That the work performed within those positions or classifications is not temporary in nature, that the work is of a kind which varies in a predictable manner by season or otherwise so that more work is required to be performed in some workweeks than in other workweeks, and that the annually adjusted regular workweek

of the employees therein requires the actual performance of an average of 40 hours of work per week.

- (3) That the department director has developed a means of equitably assigning the employees involved so that each will be required to perform a specifically assigned task or tasks as his weeks' work, which task or tasks will, on an annually adjusted basis, require the actual performance of an average of 40 hours of work per week.

- (4) That it is impracticable to assign the employees involved to a regular and uniform 40-hour workweek.

(b) The task system employee designation may be removed by the commission at any time upon its own motion or upon request of the department director and a finding that the conditions justifying its establishment as defined in subsection (a), above, no longer exist.

(c) Task system employees shall be considered to be full-time employees, and those task system employees who are not otherwise exempt from civil service classification under Article Va, section 2 of the Charter shall be entitled to civil service classification.

(d) The tasks to be performed as a regular workweek by each task system employee shall be as assigned from time to time by the department director. Such tasks shall be allocated so that they will require the actual performance of an average 40 hours of work per week on an annually adjusted basis. The department director shall maintain, by use of time clocks, a record of the hours actually worked by each task system employee by name and classification and shall furnish an annual report thereof for each calendar year to the commission by the thirty-first day of January of the next year so that the commission may properly review its designation pursuant to subsection (b) above. Any task system employee who is aggrieved by his or her task assignments shall be entitled to the recourse provided by the grievance procedure established in section 14-50 of this Code.

(e) Notwithstanding the requirements of subsections (a) and (d), above, the civil service commission may, by order, find that an average of a lesser number of hours of productive effort is equivalent to an average of 40 hours per week on an annually adjusted basis for any classifications or positions of employees authorized for task system assignment, if their department director demonstrates to the commission each of the following:

- (1) That the employees are required by virtue of the nature of their work to perform strenuous and continuing physical labor without an opportunity for the rest periods which are usually afforded to employees in other classifications;
- (2) That no practicable means exist to restructure the employees' work assignments to provide such rest periods; and
- (3) That the work tasks assigned to the employees will require a productive effort which is equivalent to not less than 40 hours of work as performed by other city employees who are assigned to labor under the normal working conditions associated with city employment.

Employees who are authorized to perform a reduced workweek pursuant to this section shall, nevertheless, not be subject to overtime benefits in any workweek unless and until all of the requirements of section 14-168 of the City Code, specifically including the requirements of subsection (e) thereof have been met. The designation of any position or classification of task system employees as equivalent workweek employees shall not impair their right to civil service classification under subsection (c) above. Consistent with the nature of the work to be performed, the commission shall establish minimum time in attendance work hour requirements, which shall in no event be less than 32 hours per week, for payroll reporting purposes as to each position or classification of task system employment which is authorized to perform an equivalent workweek under this subsection.

(Code 1968, § 12-28; Ord. No. 83-1760, § 1(1), 10-26-83; Ord. No. 84-969, § 1, 6-20-84; Ord. No. 05-91, § 1, 1-25-05)

Secs. 14-29—14-32. Reserved.

DIVISION 2. RULE 2. COMMISSION AND DIRECTOR GENERALLY; PURPOSE, ETC., OF RULES*

Sec. 14-33. Appointment of commission.

There shall be a civil service commission duly installed and to operate under the provisions of section 1, article Va of the City Charter. (Code 1968, § 12-33)

Sec. 14-34. Purposes of rules.

These rules are adopted to conform with provisions of article Va of the City Charter and shall be known as the civil service rules for employees of the city (other than firemen and policemen), adopted for the purpose of establishing procedures for handling those matters which are the responsibility of the civil service commission in such a way as to insure:

- (1) That all appointments and promotions to, and separations from, positions in the classified service shall be on the sole basis of merit and fitness, which, so far as is practicable, shall be ascertained by means of competitive examinations which may be either written, oral or unassembled.
- (2) That a plan of classification and fair compensation for positions therein shall be adopted which will conform with the principle of like pay for like work.
- (3) That employment in the service of the city shall be made attractive as a career.
- (4) That each civil service employee shall be encouraged to render his best service in compliance with all of the provisions of his employment.
- (5) That a modern, comprehensive efficiency rating system shall be provided whereby economy and effectiveness in personal ser-

*Cross reference—Boards, commissions and authorities generally, § 2-316 et seq.

vices may be promoted to the mutual benefit of the employees and the taxpayers.

(Code 1968, § 12-34)

Sec. 14-35. Application of rules.

These rules shall apply to all positions in the classified service, except those as otherwise provided for in section 2 of article Va.

(Code 1968, § 12-35)

Sec. 14-36. Adoption and publication of rules.

Civil service rules, when adopted by the commission and approved by the council, shall be effective but shall also be published in some newspaper in the city (section 4, article Va). Insertion of such notice in a single issue of a Houston newspaper of general circulation shall be treated as being in compliance with this requirement.

(Code 1968, § 12-36)

Sec. 14-37. General powers and duties of the commission.

(a) In accordance with the provisions of sections 2 and 4 of article Va, the commission shall have the power to amend, repeal or supplement these rules at any time and adopt new rules which shall become effective upon approval thereof, by the city council.

(b) The commission shall, in cooperation with the mayor and city council, develop job descriptions and qualifications, and recommend to the council a compensation plan of properly related scales of pay for all classes of positions.

(c) The commission shall, in cooperation with the mayor and city council, develop regulations covering vacations, sick leaves, leaves without pay, injury leaves, and other leaves, which will take effect when approved by the council.

(d) The commission shall develop a system of efficiency ratings and administer same for employees in the classified service.

(e) The commission shall develop and enforce a code of rules and regulations which, being based upon merit, efficiency, production, character and conduct, will provide for appointments and employment in all positions of the classified service; for reduction in forces; for the order in which employees shall be laid off and reinstated, and for appeals from dismissals, demotions and suspensions.

(f) The commission shall direct the administration and enforcement of the civil service rules and regulations and ordinances which affect the civil service commission. Should the civil service commission have reason to believe any officer, board, commissioner or person concerned with appointment, layoff, demotion, suspension, discharge or promotion, has abused such power by executing or recommending any action in violation of the civil service rules and regulations or ordinances or Charter provisions covering civil service, it shall be the duty of the commission to make an investigation and, if violation of the provision or spirit and intent of the law or rules and regulations is found, the commission shall make a report thereof to the mayor and city council and recommend appropriate action.

(g) The commission shall order reinstatement without loss of pay for any employee who has been discharged, demoted, reduced in rank or compensation or transferred for religious, racial or political reasons.

(h) The commission shall order reinstatement without loss of pay for any employee in the classified service who has been discharged, demoted, reduced in rank or compensation in any instance where, following a hearing, the commission finds as a fact that such discharge, demotion, reduction in rank or compensation was not affected in a manner consistent with these rules and regulations.

(Code 1968, § 12-37)

Sec. 14-38. Duties of director.

The duties of the director shall be:

- (1) To recommend for action by the civil service commission rules and regulations for

the proper administration and development of the merit system for employees of all departments.

- (2) To recommend for action by the civil service commission rules and regulations for the establishment of a classification plan for all positions affected herein, based upon similarity of duties and responsibility.
- (3) To recommend for action by the civil service commission rules and regulations for the establishment of a compensation plan for all positions affected herein, in conjunction with the directors of the departments.
- (4) To recommend for action by the civil service commission rules and regulations for the establishment of competitive examinations.
- (5) To recommend for action by the civil service commission reasonable provisions for preference for service of persons who have been members of the armed forces of the United States, and who are able to produce evidence of an honorable discharge.
- (6) To recommend for action by the civil service commission such other rules and regulations, including but not limited to matters pertaining to attendance of witnesses, filling of vacancies, promotions, demotions, probationary periods, layoffs, discharges, reductions and suspensions, and appeals from actions taken therewith; to make recommendations tending to establish and maintain harmony between the commission and the various city departments; to improve selection methods; to reduce excessive turnover of personnel in the departments; to forestall excessive increases in personnel; to make available to the various departments the best personnel practices; to develop an adequate and comprehensive system of personnel records; and, generally, to perform at the direction of the commission any other work necessary or proper for making effective the provisions of article Va of the Charter and the rules and regulations and the ordinances pertaining thereto.
- (7) To hold examinations, pass upon qualifications of applicants, establish eligible lists as needed, and to certify names of eligibles to department directors for filling vacancies in the city's service.
- (8) To serve as executive head of the civil service staff, to direct and supervise all of its administrative and technical activities, and with the approval of the commission, and under the budgetary procedure of the city, to direct and control the expenditures from appropriations for the civil service commission.
- (9) To serve as secretary of the commission, to keep the minutes and records thereof, and in all other proper ways to facilitate the actions and proceedings of the commission.
- (10) To examine and qualify for appointment all employees of the commission except the director and the members of the commission, and to plan, direct and supervise their work.
- (11) To establish and maintain a roster of all city employees, showing as to each the classification, position held, the salary or wages, the address, and any other necessary data, and record all changes thereof.
- (12) With the approval of the commission, to allocate each position in the classified service to its appropriate class and pay level in the classification plan and reallocate positions as conditions warrant.
- (13) To recommend to the commission for its adoption amendments of classes in the classification plan.
- (14) To make such investigations as he may deem desirable with respect to the enforcement and effect of the civil service provisions of the Charter, the ordinances, and the rules over which the commission has jurisdiction, and to make such other in-

vestigations as the commission or the mayor may request, and to make special reports thereon.

- (15) To aid the mayor and department directors in handling matters over which the commission has jurisdiction.

(Code 1968, § 12-38; Ord. No. 05-91, § 1, 1-25-05)

Secs. 14-39—14-43. Reserved.

**DIVISION 3. RULE 3. OFFICERS,
MEETINGS, ETC., OF COMMISSION**

Sec. 14-44. Reserved.

Sec. 14-45. Meetings generally.

All meetings of the commission shall be held in the city hall, shall be open to the public, and shall be held on the days and hours that the commission from time to time may designate. Special meetings may be held on the call of the chairman or the director.

(Code 1968, § 12-45)

Sec. 14-46. Rules of order, evidence or procedure.

The commission shall not be bound by any rules of order, evidence, or procedures in its meetings, hearings, or investigations, except such rules as it may establish.

(Code 1968, § 12-46)

Sec. 14-47. Quorum.

Two members of the commission shall constitute a quorum for the transaction of business. A meeting shall be adjourned in the absence of a quorum.

(Code 1968, § 12-47)

Sec. 14-48. Power to take action.

Neither the commission nor any member shall have power to take action except by authority of majority vote in the meeting assembled.

(Code 1968, § 12-48)

Sec. 14-49. Duty of director to attend meetings; minutes of meetings.

The director, or in case of his absence or disability, the one acting for him, shall attend all meetings of the commission; shall act as its secretary and have recorded its official actions in the minutes; and shall have recorded a commissioner's dissent with his reasons therefor when such there be. The director shall cause the minutes to be transcribed and shall present them for approval or amendment at the next meeting. The official copy of the minutes and any amendments thereto, or a true copy thereof, shall be certified by the chairman or vice-chairman, and attested by the director, and be kept in the office of the civil service commission.

(Code 1968, § 12-49)

Sec. 14-50. Grievable issues.

Any civil service protected employee who feels aggrieved due to:

Nonselection for a promotion to a referred position; and/or

Hazardous working conditions not intrinsic to the job; and/or

Employee performance evaluations with an overall rating of less than acceptable or effective or the equivalent; and/or

Failure to receive a performance evaluation if delayed more than six months; and/or

Failure to be paid overtime or compensatory time, if eligible, appropriate, and worked; and/or

Written reprimand;

may file a grievance and pursue it through as many of the grievance steps as desired and provided by this chapter.

(Code 1968, § 12-50; Ord. No. 77-1726, § 1, 9-6-77; Ord. No. 96-1290, § 8, 12-4-96; Ord. No. 99-768, § 2, 7-21-99)

Sec. 14-51. Grievances generally.

At each step in these proceedings, the following shall apply:

- (1) At all times, the department will give the grievant at least four calendar days notice

- of any step meeting unless a shorter period is mutually agreed upon. At each step in the process the participants shall appear in person and fully, candidly and openly discuss the grievance in an effort to mutually resolve the disputed issues.
- (2) The grievant must submit the grievance on the appropriate forms provided by the director with the grievant's original signature. The grievance form may not be signed by a representative or faxed to the grievance coordinator or the commission.
 - (3) The grievant and department management are required to mutually disclose non-privileged information, names of witnesses/persons with relevant knowledge, and provide documents to be used in the step meetings. Failure by either party to disclose known witnesses/persons with relevant knowledge, documents or information may be grounds for exclusion/inclusion of such evidence, where appropriate. Failure by the department to disclose known witnesses/persons with relevant knowledge, documents or information shall subject the person responsible to discipline.
 - (4) With the approval of a grievance examiner, a grievance may be discontinued at any step in the process for the grievant's unexcused failure to disclose witnesses/persons with relevant knowledge, documents or information, or failure to cooperate or respond. Such decisions may be reviewed by the commission.
 - (5) The dates required herein for scheduling meetings/hearings may not be extended except where an investigation for criminal misconduct is pending, where the failure to meet a date is the result of an authorized leave of absence or excused illness of the grievant, or the parties mutually and voluntarily agree in writing to extend the deadlines. Any extension granted must be reasonable and not unduly or unnecessarily delay the grievance process.
 - (6) Upon mutual agreement, grievances by more than one grievant arising out of the same or similar fact situations may be consolidated and heard concurrently at the discretion of the department.
 - (7) Grievances by the same grievant may be consolidated and heard concurrently at the discretion of the grievance examiner at step III.
 - (8) The grievant and the department shall be allowed to have a representative present at any meeting or hearing authorized herein, though each shall be conducted so that the grievant may represent himself if he so chooses. No representative need be a licensed attorney. Any representative must be in compliance with section 14-183(10) of this Code.
 - (9) No electronic or other technological mode of recording may be used at step I or II proceedings by any participant.
 - (10) Grievance forms and related documents shall not be filed in a grievant's personnel file. Every reasonable effort shall be made to keep grievances and the documents related thereto from disclosure to persons without a need to know, except as required by state, federal or local law.
 - (11) Neither step I or II meetings nor step III hearings shall be open to the public.
 - (12) In each step of the grievance process, the grievant shall be allowed a reasonable time off from his regular duties to file his grievance and to attend step I or II meetings or a step III hearing thereon, and such time off shall not be charged against the grievant. Such allowed time does not include time for preparation, meetings with witnesses or representatives, drafting responses or gathering evidence, etc. At its discretion, the department may provide an alternative work schedule or overtime as needed to accommodate the grievant's attendance at step meetings or hearings.
 - (13) Subpoenas may be issued only for step III hearings and will be limited to a maxi-

num of five fact witnesses per grievance. Upon presentation of the subpoena, city employees will be allowed reasonable time for travel and participation at step III hearings and, if city employees, will be compensated (regular or overtime hours, as appropriate) by the department.

- (14) If a grievant resigns his position with the city or is indefinitely suspended while a grievance is pending at any step proceeding, the grievance shall become moot and all further processing shall be discontinued.

(Ord. No. 99-768, § 2, 7-21-99)

Sec. 14-52. Grievance filing period.

Grievances shall be in writing and received by the designated departmental grievance coordinator within 30 calendar days (including weekends and official city holidays) after the occurrence of the action or inaction or the date on which the grievant knew or should have known through the exercise of reasonable diligence of the action or inaction for which the civil service protected employee feels himself aggrieved. This time period shall be mandatory and jurisdictional.

(Ord. No. 99-768, § 2, 7-21-99)

Sec. 14-53. Compliance oversight.

The director shall recommend to the commission for approval procedures for the handling of grievances. It shall be the responsibility of the director to monitor, coordinate and facilitate the processes of this grievance procedure. The director may designate one or more persons who shall assist the designated departmental grievance coordinators to resolve any questionable or challenged grievances, schedule and coordinate step III hearings, give timely and proper notice to all parties of step III hearings, and shall take such other and further action as shall be required to assure that this grievance procedure operates timely, correctly and effectively in compliance with these rules.

(Ord. No. 99-768, § 2, 7-21-99)

Sec. 14-54. Grievability challenges.

If there is any doubt as to whether an issue is grievable under section 14-50 above, a written request may be directed to the director to have the grievance referred to a grievance examiner for a determination of grievability. Either the grievant's department, the director or the grievant may challenge grievability at any point in the grievance process and submit written arguments on the issue of grievability.

- (1) At the request of either the grievant or the department, the grievance examiner's determination of grievability may be referred to the commission for review without hearing or testimony. Written arguments may be submitted to the commission; however, no other issues or new evidence on the issue of grievability may be submitted to the commission by either party at any time.
- (2) When a request for a determination of grievability is filed with the director or the commission, all subsequent time frames in the grievance step process shall be suspended during the period of referral and review by the grievance examiner and/or the commission.

(Ord. No. 99-768, § 2, 7-21-99)

Sec. 14-55. Grievance process.

The grievance process shall consist of four steps.

- (1) *Step I:*
 - a. The step I grievance form may be obtained from the departmental grievance coordinator. The completed form must be received by the grievance coordinator on or before the deadline. The date the grievance is filed shall be documented on the grievance form by the grievance coordinator. Thereafter, the grievance coordinator must arrange a meeting between the grievant and the immediate supervisor or another supervisor in the chain of command who might better resolve the grievance at

this step, and/or other appropriate party(ies) to be concluded no later than 30 calendar days after the date on which the grievance was received. If the meeting is not concluded within 30 calendar days, the grievance shall proceed automatically to step II.

- (i) No later than 24 hours before the meeting, the parties shall mutually exchange all documents reasonably related and relevant to the grieved issue.
 - (ii) If the grievance may not be resolved by the immediate supervisor because of a lack of authority to resolve the issue, steps I and II may be combined.
 - (iii) If the grievant's immediate supervisor is the department director, steps I and II are automatically combined and considered concurrently. In such case, the department director shall meet with the grievant and shall not appoint a designee.
 - (iv) When a less than effective EPE evaluation is grieved, at the option of the grievant, steps I and II may be combined and proceed directly to a step II meeting. If combined, all time frames shall remain the same as at step II.
- b. Regardless of the outcome of the step I meeting, the immediate supervisor or appropriate party shall respond in writing not later than ten calendar days after the date on which the meeting was concluded. The response must include the supervisor's evaluation of the grievance and proposed resolution(s), if any. Any proposed resolution must be within the authority of the supervisor or approved by the department director.
- (i) The supervisor or appropriate party shall submit the com-

pleted written response to the grievance coordinator. The grievance coordinator shall forward the supervisor's response to the grievant with a copy to the director. The response shall be either personally delivered by the grievance coordinator to the grievant or be served by certified mail, return receipt requested to the last address of record provided by the grievant on the step I grievance form.

- (ii) If no written response is submitted by the supervisor or appropriate parties within the ten calendar days following the conclusion of the step I meeting, the grievance coordinator shall have an additional ten calendar days to automatically schedule a step II meeting. Notice shall be given to the grievant, the department director/designee and the supervisor. A supervisor or appropriate party who fails to comply with the requirements of this section or to do so timely, may be disciplined.
 - (iii) An untimely filed response may be accepted at the discretion of the grievant, but will not avoid the automatic referral to step II unless the grievant requests that the grievance be withdrawn.
- c. Proposed resolution(s) for each grievance by a supervisor or appropriate party must be accepted by the grievant entirely or not at all. If the proposed resolution is rejected, the grievant may file a step II grievance form with the department grievance coordinator. If the grievant fails to timely file a step II grievance form, the grievance process is terminated. If the grievant accepts the proposed resolution(s), the department must implement the proffered resolution(s).

(2) *Step II:*

- a. To continue the grievance, the grievant must reject all of the proposed step I resolution(s), specifying reasons for the rejection on the step II grievance form. The completed step II grievance form must be received by the department grievance coordinator no later than the tenth calendar day after the date on which the grievant was served with the supervisor's response. If certified mail is used to give the step I response to the grievant, the step II grievance form still must be received no later than the tenth calendar day after the date the step I response is mailed.
- b. The grievance coordinator shall arrange a step II meeting between the grievant, the immediate supervisor and/or the appropriate party(ies) at step I and the department director or a designee of at least an assistant director level or the equivalent selected by the department director.
 - (i) Where steps I and II are combined, and the grievant's immediate supervisor is not the department director, the department director or a designee of at least assistant director or the equivalent shall hear the grievance. If the grievant's immediate supervisor is the department director, the combined step I and II meeting shall be with the department director and may not be held with a designee from any level.
 - (ii) The step II meeting must be concluded no later than 45 calendar days after the date on which the step II grievance form was received by the department's grievance coordinator. If the meeting is not concluded within 45 calendar days, the grievant has ten calendar days to request that a grievance examiner order the grievance to proceed to step III without a step II meeting. Such a request must be filed with the civil service coordinator at the human resources department in accordance with procedures recommended by the director and approved by the commission.
 - (iii) No later than 24 hours before the scheduled step II meeting, both parties must mutually exchange through the grievance coordinator, any additional non-privileged documents not previously disclosed or discovered through the exercise of reasonable diligence or provided at step I which are related to the grievant and reasonably related to his grievance or the grieved issue. Documents or information indirectly related to the grievant or his issue or related to other employees may be disclosed at the discretion of the department and the grievant respectively.
- c. Within ten calendar days after the date the step II meeting concludes, the department director or the designee who conducted the step II meeting shall provide a written response to the grievance issues together with proposed resolution(s) to the grievance coordinator who shall be responsible for service of the response on the grievant.
 - (i) Any proposed resolutions must be within the authority of the department director or designee.
 - (ii) If no written response is submitted by the department director or the designee within the ten calendar days following the conclusion of the step II meeting, the grievance coordinator

shall have an additional ten calendar days to refer the grievance to the civil service coordinator of the human resources department to automatically set the grievance for a step III hearing. Notice shall be given to the grievant, the department director or the designee and the supervisor that the matter was automatically referred to step III.

- (iii) An untimely filed response may be accepted at the discretion of the grievant, but will not avoid the automatic referral to step III unless the grievant requests that the grievance be withdrawn.

- d. Proposed step II resolution(s) must be accepted by the grievant entirely or not at all. If the grievant accepts the proposed resolution(s), the department must implement the resolution(s).

(3) *Alternative mediated Step II proceeding for written reprimands or performance evaluations less than effective:*

At the time of filing a step II proceeding only for a grievance of a written reprimand or an employee performance evaluation (EPE) that is less than effective, the grievant may elect to proceed to a step II meeting with a department director or designee or to proceed to request a mediated step II in accordance with the procedures set forth below.

- a. The director shall be authorized to establish a mediation program and to develop procedures for its implementation. Prior to implementation, the commission shall approve rules and procedures for step II mediations, which shall be in writing and made available to all parties. A mediation program for this purpose shall have certified mediators who shall not be city employees. A mediation

program established under this section shall have the following features:

- (i) At step II, instead of a meeting with the department director or a designee, the parties may mutually agree to mediate either grievable issue (written reprimand or less than effective EPE). A mediated step II must be accomplished within the same time frames as a nonmediated step II proceeding.
- (ii) If a settlement is reached and reduced to writing and signed by all parties at the mediated step II, no further appeal is allowed.
- (iii) If a settlement is not reached through mediation, a grievant who wishes to continue the grievance shall file a step III request for grievance hearing with the director on or before the tenth calendar day following the conclusion of the mediated step II meeting.

- b. No mediator may be called to testify at the commission or at a step III hearing.

(4) *Step III:* The director or his designee shall coordinate all proceedings at steps III and IV.

Grievance examiner

- a. The completed step III request for grievance hearing form obtained from the human resources department must be received by the director on or before the tenth calendar day following service of the written step II department response or the conclusion of the mediation, as applicable. If the grievant fails timely to file a step III request, the grievance process is terminated. The request for grievance hearing must specify the reasons for the rejection. The director or his designee shall notify the

- department grievance coordinator when a step III request is filed and serve notice of the scheduled hearing date and time on the grievant and the department at least ten calendar days before the hearing.
- b. The grievance examiner shall conclude an evidentiary hearing within 60 calendar days after the date of receipt by the director of the step III request for grievance hearing. If the grievant fails to appear at the hearing, the grievance examiner shall dismiss the grievance.
 - c. Step III grievance hearings shall be limited to the issues articulated at step I and shall be conducted as informal administrative proceedings. The presumption in favor of the departmental action mandated by the City Charter is rebuttable. The burden shall be on the grievant to support the grievance by a preponderance of the evidence.
 - d. At each hearing, the grievance examiner shall:
 - (i) Review the current status of the grievance;
 - (ii) Determine whether jurisdiction is proper;
 - (iii) Determine the issues to be addressed and the extent to which evidence will be allowed;
 - (iv) Determine who will be allowed to testify and what documentary and other evidence will be admitted; and
 - (v) Hear the evidence and ensure that the proceedings follow due process and these rules.
 - d. Written rules of evidence, order and procedure shall be adopted by the commission with copies provided to the parties at the time of filing. All rules adopted by the commission for step III hearings shall be enforced by grievance examiners. A record shall be made of the hearing.
 - e. The parties to a hearing before the grievance examiner shall be the grievant, his representative and the department by and through a departmental representative designated by the department director and the department's attorney. Other persons who may attend include fact witnesses, appropriate supervisory personnel, and any other persons necessary for a fair determination of the grievance.
 - f. Grievance examiners may issue subpoenas to require the attendance of witnesses and/or the production of books, documents, records or other tangible evidence relevant to any factual dispute. Alternative forms of allowable testimony (video, telephonic, deposition, affidavit, etc.) may be accepted in addition to or in lieu of live testimony if, in the opinion of the examiner, such alternative testimony is credible, relevant, authentic, and reliable.
 - g. All witnesses shall be examined under oath in relation to any matters relevant to the grievance issues. No general references or character evidence or testimony shall be allowed in any form including character affidavits, declarations or statements. Persons to be called as witnesses may be excluded from the hearing room during the taking of testimony upon the request of either party.
 - h. Grievance examiners may impose a reasonable time limit on the time allowed the parties to present evidence or examine witnesses, limit the number of witnesses to be heard, and may restrict presentation of the issues or the proceedings.
 - i. After the close of evidence and the arguments of the parties, if any, are

allowed, the grievance examiner may rule immediately into the record or take the matter under advisement. In either case, the grievance examiner shall file a written determination within 15 calendar days after the date the hearing concludes. The determination shall consist of findings of fact and conclusions of law based upon the grievance issues, evidence, legal principles and arguments presented and recommendations for resolution of the grievance. The authority and powers of the grievance examiner are limited to those of the commission as reflected by the commission's rules, the Charter and ordinances. A grievance examiner may not exceed his/her jurisdiction or authority or recommend relief that is not otherwise authorized by this chapter or these rules.

- j. The grievance examiner's determination shall be served on the grievant on or before the fifth calendar day following receipt by the director with a copy to the commission and the department director.
- k. If the grievance examiner's determination is improper due to lack of jurisdiction, authority, due process or sufficiency of the evidence to sustain the examiner's findings or recommendations, either party may file a step IV request for review on a form provided by the director. If both the grievant and the department director fail to timely file a request for review, the grievance examiner's determination is deemed affirmed by the commission and the grievance process terminated.

(5) *Step IV:*

- a. The completed step IV request for review form must be received by the commission on or before the tenth calendar day following service of the grievance examiner's determination.

- b. The step IV request for review form provided by the director must include all of the reasons for the request, all agreed facts and issues through step III and may include a statement in support of the issues and/or a proposed resolution together with all supporting documentation and justification for the request. A copy shall be served upon the opposing party. No reply statement is allowed by the filing party.
- c. The opposing party may file a response in support of the determination and/or a proposed resolution together with any agreed issues and/or facts and all supporting documentation and justification to be served upon the commission and all opposing parties at least seven calendar days before the scheduled commission review. The burden of proof remains on the grievant.
- d. If both parties file a step IV request for review, each may prepare and file a response to the opposing party's request and statement.
- e. Review by the commission shall be limited to the evidence before the grievance examiner. No new evidence may be submitted or introduced for the first time at step IV.
- f. The commission may affirm, reverse, or modify the grievance examiner's determination and issue an order which shall be served upon the parties with a copy to the grievance coordinator and the grievance examiner. The commission's order is final for all administrative purposes.

(Ord. No. 99-768, § 2, 7-21-99; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-55.1. Grievance coordinators.

- (a) Each department director shall appoint from among the employees in that department one or more grievance coordinator(s) who shall perform without additional compensation the ministerial,

administrative and clerical duties required to coordinate this grievance procedure within the department. The title 'grievance coordinator' is a functional designation of the person(s) selected by the department to be the focal point for the initiation, facilitation and completion of the mechanics and logistics of the grievance process, and confers no official status, position, authority, or power upon the person(s) so appointed. The department may assign additional duties to the grievance coordinator(s) relating to any employee concerns review programs adopted by the department.

(b) The grievance coordinator(s) shall:

- (1) Be responsible for implementing the requirements of this procedure and ensuring timely and correct compliance with these rules within the department.
- (2) Provide all civil service protected employees with appropriate forms for filing grievances, upon request, along with written instructions or guidelines, but shall not assist or fill out the forms for the grievant.
- (3) Before accepting the grievance, receive and review the grievance form to ensure that it is:
 - a. Grievable as set forth hereinabove,
 - b. Complete in sufficient detail to inform the department of the factual basis,
 - c. Timely filed, and
 - d. Executed by a civil service protected employee.
- (4) Refer any questionable grievances in compliance with these rules.
- (5) Arrange and coordinate all meetings and proceedings required herein, notify all participants of scheduled meetings/proceedings, and may only facilitate scheduling, but not conduct meetings.
- (6) Coordinate the exchange between the parties of documents, forms, and other materials associated with each grievance.

- (7) Provide responses or information regarding policies and procedures when requested.
- (8) Receive the results of the step proceedings from the departmental representatives and forward them to the appropriate participants.
- (9) Keep a permanent record of all grievances filed and maintain all grievance matters and related documents in segregated, confidential files. Subject to federal, state and local law, all information contained in such files may be disclosed on a need to know basis only. Any employee who otherwise discloses such confidential information without the grievant's authorization, may be subject to disciplinary action.

(c) Grievance coordinator(s) shall not:

- (1) Encourage or discourage grievances, nor represent or advocate for or against the grievant or the department at any time, at meetings or otherwise.
- (2) Participate in the decision making.

(d) Copies of all grievance forms and related documents filed with the grievance coordinator at each step of these proceedings shall be forwarded to the director.

(Ord. No. 99-768, § 2, 7-21-99; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-55.2. Grievance examiners.

The commission shall appoint qualified persons, independent of all city departments and experienced in employment related issues to preside over and conduct step III grievance hearings. Each appointment shall be for a term of one year. Reappointment to successive one year terms shall be at the discretion of the commission. The grievance examiner shall be responsible only to the commission.

- (1) A grievance examiner shall not be a city employee nor shall such examiner be considered an employee by such service to the commission.
- (2) An examiner may be removed from an appointment by a majority vote of the

commission. Removal may be by resignation or cause including but not limited to, a violation of an ordinance or criminal laws whether misdemeanors or felonies including moral turpitude, continued failure to be available to hear grievances, negligence, or failure to perform the duties of an examiner timely, to follow the rules of the commission, or to provide due process.

- (3) For participation in the hearing and providing a written determination, each examiner shall be paid a fee set by the commission. A separate budget account shall be set up for this purpose by the director.
 - (4) The director shall provide each grievance examiner with a suitable location to hold hearings and sufficient clerical support to perform his duties.
 - (5) Anyone who has a complaint against a grievance examiner, may file such complaint in writing with the director. Any such complaints will be set on the next agenda of the commission for review whereupon the commission will determine the appropriate action to be taken (e.g. investigation, notice, opportunity to respond, etc.) with regard to such complaint(s).
- (Ord. No. 99-768, § 2, 7-21-99)

Sec. 14-55.3. Retaliation prohibited.

It shall be a violation of the civil service rules and regulations for any supervisor to take any retaliatory action against any grievant for utilizing or participating in any of the grievance procedures established by this section. It shall also be a violation for a grievant to retaliate against a supervisor or another employee for participating in a grievance. If retaliation is alleged to have occurred, it shall be incorporated into the next succeeding step proceeding through step III.

(Ord. No. 99-768, § 2, 7-21-99)

Sec. 14-55.4. Notice of these procedures.

The director shall provide a suitable notice explaining this grievance procedure and the grievant's rights thereunder and furnish an ade-

quate number of copies to each city department. The department director shall cause to be posted in a prominent place at least one copy of such notice in each division within the department.

(Ord. No. 99-768, § 2, 7-21-99; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-55.5. Assistance by legal and human resources departments.

When requested to do so by the commission, the director, or the department director of the grievant who has filed a grievance under this procedure, the legal and/or the human resources departments shall assist in the representation or resolution of a grievance.

(Ord. No. 99-768, § 2, 7-21-99; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-55.6. Record keeping requirements.

The director shall be the official custodian of all records involving grievances after each grievance has been resolved. A repository of closed grievances shall be maintained in the human resources department.

(Ord. No. 99-768, § 2, 7-21-99)

Sec. 14-55.7. Nongrievable issues.

Unless specifically authorized in section 14-50 above, other issues that concern employees shall be handled as set forth below:

- (1) *Employee concerns review programs.* All departments shall establish and implement programs with written procedures to address employee concerns which do not allege discrimination or are not expressly made grievable herein. The director shall establish guidelines for such programs which shall be approved by the civil service commission prior to the development of any departmental program. Regardless of the form or manner, programs such as peer review, employee representative councils, mediation or any other alternative dispute resolution mecha-

nism, or any combination of programs may be implemented to address such issues.

- a. Each department's employee concerns review programs must be accessible to all of its employees regardless of civil service protection (e.g. probationary, part time, appointed, executive etc.).
 - b. Departments may reasonably limit concerns which can be addressed through this process. All programs and procedures and any amendments or subsequent changes must be approved by the commission prior to implementation.
 - c. There is no appeal to or review by the commission of decisions made by departments in any employee concerns review program.
- (2) *Nonreferral complaints.* The director shall establish procedures for addressing complaints regarding nonreferral of applicants to posted vacant positions.
- (3) *Classification challenge.* Any civil service protected employee who feels that he is performing duties outside the course and scope of his classification as defined by the position job description and EPE plan, may request a review of his actual duties performed to ensure conformity and consistency in that classification and the classification system.
- a. The request must be made in writing and filed with the employee's department director or his designee.
 - b. The department reviews the request to determine whether the request has merit and may be resolved internally. The department may elect to:
 - (i) Make no change in the employee's duties;
 - (ii) Eliminate any duties alleged to be outside the job description and EPE Plan of the employee's classification;
 - c.
 - (iii) Assign other duties to the employee within the current job description and EPE plan; or
 - (iv) Request an analysis and recommendation from the director. The department director shall notify the director of the request for review.
 - d. If the department requests an analysis, upon receiving the director's determination, the department has ten calendar days to elect to change the employee's duties, keep the same duties, or eliminate any additional duties not previously assigned to the employee alleged to be outside the employee's job description and EPE plan. The department director or designee shall respond in writing to the director within ten calendar days of receipt of the director's determination, setting forth the proposed action(s), if any, to be made with respect to the employee's duties and/or classification. The director will send the department's response to the employee.
 - (i) If the department implements the director's recommendation(s), the employee must accept the department's proposed action(s) within ten calendar days of notice of the department's response provided by the director. If the employee fails to accept timely, the offer is presumed rejected and the request may not be pursued further. There is no appeal to or review by the commission.
 - (ii) If the department's proposed action(s) is inconsistent with the director's determination, the employee may request a review by the commission.

- d. When authorized above, the employee must request a review by the commission in writing on a form provided by the director within ten

calendar days of the employee's receipt of the department's response provided by the director. The request must be filed with the director, who shall log the request, monitor its progress and place the request on the agenda of the commission at the next possible regularly scheduled meeting. At least ten calendar days notice of the date of the commission review shall be served on all parties.

- (i) The parties may submit written arguments and relevant documents in support of their respective positions. The director shall supply a copy of his determination to the commission at least five calendar days before the matter is scheduled for commission review.
 - (ii) The commission shall review the director's determination and the written arguments of the parties and issue its order at the earliest practical time after the scheduled meeting of the commission affirming, rejecting, or modifying the determination of the director with regard to the employee's duties and/or classification.
- (4) *Discrimination complaints.* Any complaint which alleges discrimination in whole or in part, based on race, color, religion, sex, national origin, age 40 years and over, Vietnam Era veteran status, disability, or retaliation for filing a charge/claim of discrimination (discrimination factors) is not grievable through the grievance process. All such claims will be referred by the grievance coordinator to the office of the inspector general for investigation and/or to the director for a determination of severability, if necessary. All or any portion of the complaint which is not based upon a discrimination factor and which may be segregated and severed, may proceed through the grievance process if it is otherwise grievable herein even if the

grievant has concurrently or subsequently filed a complaint on the nongrievable (discrimination based) aspects of the complaint with the office of inspector general and/or the Equal Employment Opportunity Commission (EEOC), or the Texas Commission on Human Rights (TCHR).

- a. If at any point in the grievance process, a grievant alleges discrimination in either the grievance forms, at step proceedings, or in documentary materials, all such discrimination based issues, documents or testimony will be excluded from consideration.
- b. If the grievable issues cannot be separated from the discrimination based issues which are not grievable, further processing of the grievance will be suspended, and the grievance will be referred to the office of inspector general for an investigation of the discrimination complaint. If an allegation of discrimination is sustained, the office of inspector general will inform the department who will attempt to resolve the issues in accordance with the applicable law. If any nondiscrimination issues remain to be resolved after the office of inspector general issues its findings, any previously intertwined grievable issues will be referred back to the department (if referred at steps I or II) or to the director (if referred at step III) for completion of grievance processing of the remaining unresolved grievable (nondiscrimination) issues.
- c. A civil service protected employee who files a grievance must affirm in writing on a form provided by the director, that the grievance is not based upon a discrimination factor in whole or in part. If the grievant indicates a discrimination factor on the form, the grievant will be re-

ferred to the office of inspector general and the grievance handled as indicated above.

- d. Notices regarding the filing of federal and state law complaints of discrimination shall be posted in prominent places in compliance with state and federal laws. A charge of discrimination filed with the EEOC or the TCHR will not affect a valid grievance based on the same facts, even if concurrently or subsequently filed with the processing of the grievance, so long as the grievance is processed in accordance with the rules set forth above and limited to the nondiscrimination based facts. EEOC and/or TCHR determinations will not effect any grievance.

- (5) *City appeals to state court.* In cases of exceptional importance, legal precedence, or challenges to jurisdiction or legal authority, the city/department may seek a declaratory judgment from a state district court of Harris County construing the commission's order(s). The appeal must be filed within thirty days of the date of the commission's order and is based upon substantial evidence. The commission need not be joined as a necessary party.

(Ord. No. 99-768, § 2, 7-21-99; Ord. No. 05-91, § 1, 1-25-05)

DIVISION 4. RULE 4. CLASSIFICATION PLAN

Sec. 14-56. Generally.

The commission shall, in cooperation with the mayor and city council, have a classification plan which shall provide for the use of standard titles for all classes of positions in the classified service, and a written definition for each classification which will describe duties and responsibilities and set forth minimum requirements necessary for the successful performance of the task involved in each classification.

(Code 1968, § 12-56)

Sec. 14-57. Adding or revising classifications.

The commission may, at any meeting, add new classifications or revise existing classifications whenever it is deemed advisable, always subject to the approval of the mayor and city council. There shall be no new classification proposed for council approval until the proposal, with full details of the duties involved, has been submitted to the commission for its recommendation.

(Code 1968, § 12-57)

Sec. 14-58. Interpretation of specifications.

The specifications of the various positions in the classification plan are hereby declared to have the following force and effect:

- (1) The use of a particular expression or illustration as to duties, qualifications, or other attributes, shall not be held to exclude others not mentioned, provided such others are similar in kind or quality; nor to limit the power of the supervising authority to alter the detailed tasks involved in the duties of a position. But when a substantial change of duties is made, except for limited, temporary periods, such change shall be reported to the commission with a view to a possible reclassification of the position.
- (2) In determining where a given position is to be allocated, the specifications shall be considered as a whole. Consideration shall be given to the general duties, the specific tasks, responsibilities, and qualification requirements, and to the relation of the position to other classifications as all together affording a picture of the kind of employment the classification is intended to embrace.
- (3) The commission shall prescribe minimum and maximum age requirements of applicants for appointment to particular positions. The minimum age for employment in the classified service of the city shall be 18 years. And for all classes, qualifications such as citizenship, honesty, sobriety, industry, and good physical condition,

shall be deemed to be required even though they may not be specifically mentioned in the definitions of the positions.

- (4) The statement of necessary special qualifications in the specifications of a position, comprising an enumeration of license, registration, or other legal qualifications required for the performance of the duties of the position, shall constitute a basis and source of authority for acceptance or rejection of applications for examination for the position and also for the evaluation of the qualifications of an applicant. When such qualifications exist in state laws or city ordinances, they shall be required even though they are not specifically stated in the specifications.

(Code 1968, § 12-58)

Sec. 14-59. Allocation of positions to classes.

The commission shall allocate each position in the classified service to its appropriate class under the classification plan by placing in each class those positions substantially similar in nature, degree of difficulty, responsibility, and character of work which require generally the same kind and amount of training and experience for proper performance and which merit approximately equal pay. In making such allocations, provisions shall be made for the uniform application of the classification plan to positions in the various departments of the city.

(Code 1968, § 12-59)

Sec. 14-60. Status of incumbents of positions when allocated.

Should a position in the original allocation process be allocated or reallocated to a different class in order to correct an error in its original allocation, the employee in such position shall be entitled to continue therein, provided he legally occupies that position by regular appointment thereto.

(Code 1968, § 12-60)

Sec. 14-61. Allocation of new positions and reallocation.

(a) Whenever a new position is created by the mayor and city council, the commission shall allocate the position to its proper class in the classification plan or if no suitable class exists, one shall be established as provided in these rules, and the position allocated.

(b) Whenever the duties of a position are so changed as to justify its allocation to a different class, the commission shall make that reallocation and shall decide whether the change represents a promotion or a demotion for the incumbent of the position. Should it be a promotion, the incumbent must qualify therefor, provided he has not previously done so.

(Code 1968, § 12-61)

Sec. 14-62. Protesting allocations.

If an employee believes that his position has been improperly allocated, he may protest by presenting his reason therefor upon such forms or documents as the director may prescribe. The claim shall be investigated by the director, then referred to the commission for its decision which shall be final.

(Code 1968, § 12-62)

Sec. 14-63. Use of position titles.

The commission-approved title of each position shall be its official title for all purposes having to do with the position as such and shall be used to the exclusion of all other titles on all payrolls, budget estimates, official records and reports and personnel forms.

(Code 1968, § 12-63)

Sec. 14-64. Effect of classification on payments of salaries.

No employee shall be appointed, employed, or paid under any title other than that of the class to which the position occupied by him is allocated.

(Code 1968, § 12-64)

Sec. 14-65. Right to make investigations.

The commission shall have the right to initiate and conduct investigations of positions in the

classified service at any time and to propose changes in the classifications of positions when the facts warrant such action. The commission, through the director, may secure from the employee or his supervisor a new statement of the duties and responsibilities of the position under consideration. The employee and the supervising authority shall have an opportunity to be heard by the commission before the revised classification shall become effective.

(Code 1968, § 12-65)

Secs. 14-66—14-70. Reserved.

DIVISION 5. RULE 5. COMPENSATION PLAN

Sec. 14-71. Preparation, approval and revision.

The commission, in cooperation with the mayor and city council, shall prepare or cause to be prepared a compensation plan for the classified service and from time to time propose such revision as may be deemed advisable so as to provide for uniform scales of pay for all classes of positions. No such plan shall become effective until it has been approved by the mayor and city council.

(Code 1968, § 12-71)

Sec. 14-72. Adjustment of wages when plan made effective.

When the compensation plan is made effective under these rules by ordinance, the employees with a certain classification who are receiving a salary or wage lower than the minimum for that classification shall have their salary or wage increased to an amount equal to the minimum for that classification. The salaries or wages which are in excess of the maximum for that classification shall be considered individually by the commission and they in turn shall make recommendations to the mayor and city council for their action.

(Code 1968, § 12-72)

Sec. 14-73. Longevity pay.

(a) Effective January 1, 1975, in addition to his base salary, each full-time permanent employee shall be paid longevity pay in the sum of

\$2.00 per bi-weekly pay period for each one year period of actual service with the city. The maximum longevity to which any employee shall be entitled under this section shall not exceed \$50.00 per bi-weekly pay period.

(b) Longevity pay for employees of the city shall be computed on a bi-weekly basis being effective on the first day of the first pay period following the employee's anniversary date of employment with the city. In computing actual service, time spent on authorized absence on military leave for service with the armed forces of the United States shall be included, but any other period of time in which an employee is out of the service of the city, or absent on leave without pay in excess of 90 days in any 36-month period, shall not be counted, provided, however, that in the case of extended leave without pay only the period in excess of 90 days shall not be counted.

(Code 1968, § 12-73; Ord. No. 69-1889, § 1, 10-14-69; Ord. No. 73-2469, § 1, 12-19-73; Ord. No. 74-2, § 1, 1-2-74; Ord. No. 76-137, § 1, 1-27-76)

Sec. 14-74. Shift pay differential for certain city employees.

(a) For the purposes of this section the following phrases shall have the meanings hereby ascribed to them:

- (1) *Day shift.* Any regularly scheduled work shift which begins between the hours of 5:00 a.m. and 12:00 noon.
- (2) *Second shift.* Any regularly scheduled work shift which begins between the hours of 12:00 noon and 6:00 p.m.
- (3) *Third shift.* Any regularly scheduled work shift which begins between the hours of 6:00 p.m. and 5:00 a.m.

(b) All permanent, full-time employees of the city, other than firemen and policemen, who are assigned to the second shift shall be paid, in addition to their base pay, shift differential in the amount of \$0.25 per hour.

(c) All permanent, full-time employees of the city, other than firemen and policemen, who are assigned to the third shift shall be paid, in addition to their base pay, shift differential in the amount of \$0.35 per hour.

(Code 1968, § 12-74; Ord. No. 70-136, §§ 1—5, 1-28-70; Ord. No. 91-1181, § 1, 8-14-91)

Secs. 14-75—14-78. Reserved.**DIVISION 6. RULE 6. EXAMINATION****Sec. 14-79. Requirements for tests.**

The director shall, whenever vacancies exist within the classified service or even in advance of such vacancies, prepare, view and rate necessary tests, or direct this work, which tests shall determine the fitness of applicants for classified positions. No person shall be appointed to a position in the classified service, except as otherwise provided for by law, until he shall have signed a completed application on the forms prescribed by the commission, has qualified by passing the required examination, and has been certified for appointment in accordance with these rules. (Code 1968, § 12-79)

Sec. 14-80. Notice required; exceptions.

The commission shall give public notice of competitive group examinations at least ten calendar days prior to such examinations by posting notices in the office of the commission, upon any public bulletin boards available in the city hall, and elsewhere as the director may decide. Such examinations may be further publicized through the use of any other media most likely to reach qualified applicants for the position in question. This requirement may be waived by the commission in cases of special examinations for positions for which there is substantial difficulty in obtaining qualified applicants. (Code 1968, § 12-80)

Sec. 14-81. Contents of notice.

Each official notice of an examination or test shall state the title, duties and pay of the position for which the test is to be held, the qualifications required, the time and place for making application, the time and place of examination or test, and any other information which is deemed to be pertinent and useful. (Code 1968, § 12-81)

Sec. 14-82. Open application period.

Should the commission find that there is a shortage of qualified candidates for classes of

positions which urgently need to be filled, it may announce that no time limit has been established for receiving applications, and applications may be filed during such period of time as may be necessary to establish a satisfactory employment list. When a satisfactory employment list has been established, public notice shall then be given that no further applications will be accepted. (Code 1968, § 12-82)

Sec. 14-83. Types of examinations.

(a) All examinations shall be impartial, fair, and practical in character and designed to measure fairly the applicant's qualifications for and fitness to discharge the duties of the position which he seeks to fill.

(b) An examination may be written, oral or unassembled and may include physical tests, demonstrations of skill, evaluation of training and experience of applicants as recorded in their applications, or any combination thereof, as decided upon by the civil service commission. (Code 1968, § 12-83)

Sec. 14-84. Admission to examinations.

(a) All applications shall be made on forms prescribed by the director who may require such information as he deems pertinent, but no questions in the application, or in any other portion of the examination, shall be so framed as to elicit information concerning the political, fraternal or religious opinion or affiliation of the applicant.

(b) Any person may apply for any examination unless the public notice of same shall disqualify such person based upon a bona fide occupational qualification.

(c) The commission may reject the application of any person for admission to an examination or test of fitness, or refuse to test any applicant, who is found to lack any of the qualifications prescribed in the public notice, or who is physically or mentally unfit to perform effectively the duties of the class, or who is addicted to the habitual use of alcoholic beverages to excess or to the use of drugs, or who has been adjudged guilty of a crime involving moral turpitude or infamous or disgraceful conduct, or who has been dismissed from the

public service for delinquency or misconduct, or who has made false statements of any material fact, or has practiced or attempted to practice deception or fraud in his application or in his examination or test. In every such case, the commission may reject the application and likewise may cancel the eligibility of the applicant if he has already been admitted to an examination and has attained a place on an eligible list, and take action for his removal from the service in case he has already received appointment when such finding is made.

(d) The director may exclude from any further participation in any examination any applicant who does not make a passing grade on any part of an examination where the examination is in more than one part and consists of tests of skill, physical tests, and medical examinations. Failure in any portion of this type of test will be sufficient grounds for exclusion in any other part of the examination, or, if all portions of the examination have been completed, the director may declare such applicant as failing in the entire examination.

(e) When applications are received from qualified applicants who are living in another city and it is not practical for such applicants to present themselves in the city for the examination, the director may make arrangements with the civil service office in that city or, in lieu thereof, with the high school principal or any other person in that city who is acceptable to the commission to administer the examination.
(Code 1968, § 12-84)

Sec. 14-85. Conduct of examinations and tests.

(a) The examinations and tests shall be conducted by the director, or by persons designated by him, at the time and place stated in the notices or advertisements of examinations or tests and according to the procedure established by the director. Safeguards shall be devised which, insofar as possible and practicable, shall, except in oral examinations, conceal the identity of candidates from examiners or other persons engaged in scoring, marking, or otherwise rating the candidates.

(b) The director shall arrange for suitable persons in the service of the city, with the consent of the supervising authorities under whom such persons work, to assist in examinations. When there is an insufficient number of such persons available, the director may arrange to employ temporarily such other persons as might be needed and shall provide for their pay.

(c) It shall be the duty of all city employees having such authority to allow the reasonable use of public buildings and other facilities as conditions might require for holding such examinations and tests.

(Code 1968, § 12-85)

Sec. 14-86. Passing grade.

The commission shall have the power to place the passing grade at any figure or percentage deemed equitable in each test but, unless a definite figure is set, the passing grade shall be 70, based upon a total weight of 100 for the entire examination or test.

(Code 1968, § 12-86)

Sec. 14-87. Eligibility for examinations and tests.

(a) Tests of fitness for original entrance shall be open to persons who meet the requirements for admission to the tests as established in the public notices therefor or as specified in these rules. Such requirements may relate only to qualifications, characteristics, skills and abilities related to the actual performance of the duties of the job for which the examination is being held.

(b) No additional applicant shall be admitted to the examination room after any candidate has permanently absented himself from the place of examination.

(Code 1968, § 12-87; Ord. No. 77-1302, § 1, 7-5-77)

Sec. 14-88. Reexaminations; correcting; amending, etc., records.

The commission shall have the power, whenever in its judgment the interests of the public service require it, to order a reexamination of applicants for any position, and shall have the power to correct, amend, or revoke any schedule,

list or other papers or records when it appears that an error or injustice has been done; and when any person whose name appears on the eligible list has, for any reason, become incapacitated for appointment in the public service, the commission may strike such name from said register. The reason for such action shall be recorded in full in the minutes of the commission. (Code 1968, § 12-88)

Sec. 14-89. Original papers.

All original papers, applications, examination papers and questions, certificates, and all other papers pertaining to the application and examination are the property of the commission and must be filed in the office of the commission and kept not less than one year; exceptions are the examination papers of those failing to pass which may be destroyed after 60 days. (Code 1968, § 12-89)

Sec. 14-90. Notice of results.

Each person competing in an examination or test shall be given a written notice of his final earned rating and, if he has passed, of his relative standing on the list. Those who fail to attain a place on the list shall be notified of that fact. (Code 1968, § 12-90)

Sec. 14-91. Review of results.

Each person competing in a test or examination may, within five days after the date of mailing of notice of the results, only after such person has requested in writing to the director, be permitted to inspect his rating and examination or test papers at the office of the civil service commission during business hours, and may secure any necessary explanations of the methods by which the ratings were determined. However, no examinee will be permitted to review the questions used in written examination but may be allowed to review his answer sheet only. (Code 1968, § 12-91)

Sec. 14-92. Appeals.

An examinee may file his appeal with the director for correction of his rating at any time during the five days immediately following the

determination of examination results; such appeals must be made in writing and must set forth the grounds for such appeal. The commission shall review such appeal within a reasonable time and shall notify the examinee of its decision, and the decision of the commission shall be final. (Code 1968, § 12-92)

Sec. 14-93. Correction of results.

If, after examination of the appeal filed by a candidate, the director finds that any manifest error existed in the rating, scoring, or computing of the results, he shall, upon approval by the commission, make the required correction and place the name of that person in its true position on the list as the correction warrants. Such correction, however, shall not invalidate any appointment previously made from such list. (Code 1968, § 12-93)

Secs. 14-94—14-98. Reserved.

DIVISION 7. RULE 7. ELIGIBLE LISTS

Sec. 14-99. Preparation; contents.

(a) The director may prepare an eligible list, when needed, from the results of each original appointment examination. The list shall contain the names of those persons who have met the minimum requirements for eligibility. Names shall be listed in a descending scale order starting with the one receiving the highest rating.

(b) When two or more candidates have equal final weighted ratings, their names shall be arranged on the list in the order of their performance in the written test; but when this arrangement fails to resolve the tie, the order on the list shall be determined by the order in which the application was accepted.

(c) When a list is being prepared in the course of an open application or examination period, as provided for by rule 6, section 14-84, names of eligibles shall be added to the list as rapidly as the necessary examinations are completed and rated, and in the order to which their final earned ratings entitle them. However, names certified prior to receipt of later eligibles shall not in-

stantly be affected even though later eligibles may have higher earned final ratings being affected only when these certified are returned to the eligible list at which time the higher, though later, ratings shall be placed above on the list to await another certification.
(Code 1968, § 12-99)

Sec. 14-100. Duration of lists.

All eligibility lists shall remain in existence for one year unless sooner exhausted and at the end of one year they shall expire and new examinations shall be given as the need requires.
(Code 1968, § 12-100; Ord. No. 77-500, § 1, 3-15-77)

Sec. 14-101. Promotional lists.

After each promotional examination, the commission, through the director, shall prepare and keep available a promotional employment list of persons successfully passing the examination, arranged in descending scale order of final weighted ratings. When two or more persons have equal final weighted ratings, their names shall be placed in the following manner: The one with the higher service rating shall be placed above the other; but if there should still be a tie, the one of greater seniority shall be placed above the other one.
(Code 1968, § 12-101)

Sec. 14-102. Reemployment lists.

(a) Any employee who has held a permanent position in the classified service and has been laid off for reasons not to his discredit or whose position has been abolished under reduction of forces shall have his name placed upon the reemployment list according to the date laid off, and shall remain thereon for a period of one year.

(b) Any person who voluntarily resigns from a position in the classified service and who leaves the service shall forfeit any rights which he might have had under civil service and may be reemployed in the classified service only in the manner prescribed by the rule governing original appointment. Nothing herein contained shall affect ad-

versely the rights of any employee who enters the uniformed military forces as provided under rules governing leaves.
(Code 1968, § 12-102)

Sec. 14-103. Removal of names.

Names of eligibles may be removed from an employment list for any of the following reasons:

- (1) Failure to report for an interview within three days (weekends and holidays excepted) after notification by the commission.
- (2) Declining an appointment without reasons satisfactory to the commission.
- (3) Inability of the postal authorities to locate him.
- (4) Having been appointed previously to fill a permanent position.
- (5) Continued unavailability after expiration of a stated limited period of time during which, at the eligible's request, the director has not certified him.
- (6) Failure to promptly report to work after appointment.
- (7) Death of eligible.
- (8) Loss of citizenship.
- (9) When, at any time after the creation of an eligible list, the commission has reason to believe that one whose name appears on the list is unqualified for appointment because of incapacity developed subsequent to his examination, or because of errors disclosed in computing his examination score, or because of false statements made in his application, or for other similar reasons.

(Code 1968, § 12-103)

Sec. 14-104. Offenses relative to examinations, applications, etc.

No person shall wilfully, by himself or in cooperation with any others, defeat, deceive, or obstruct any person in respect to his rights to any test of fitness or appointment to any position under the provisions of article Va and any rules or

ordinances adopted thereunder; nor shall anyone wilfully and falsely mark, grade, estimate or report upon, the tests of fitness, the standing of any person tested or certified, or the service ratings of any employee; nor shall anyone aid in so doing; nor shall anyone wilfully make any false representation concerning any person tested, or wilfully furnish to any person any special or secret information for the purpose of either improving or injuring that persons's prospects or chances in connection with any examination or test or appointment; nor shall anyone impersonate any other person or permit or aid in any manner any other person to impersonate him in connection with any examination or test or appointment or application or request to be examined. Violation of this rule by a city employee shall be grounds for prompt and permanent dismissal of the offending employee or employees as provided for by rule 15. Violation of this rule by an applicant shall cancel all present and future rights of that applicant or candidate for consideration as an appointee to the city's service.

(Code 1968, § 12-104)

Secs. 14-105—14-109. Reserved.

DIVISION 8. RULE 8. CERTIFICATION AND APPOINTMENT; TRANSFERS

Sec. 14-110. Requests for certification.

Whenever it is desired to fill a vacant classified position, written notification and such information as might be necessary for an intelligent certification shall be submitted to the commission on a form prescribed by the director. Insofar as is practicable, each vacancy shall be anticipated sufficiently in advance by the department in order to permit the director to determine who may be available for appointment and, if necessary, to prepare a class specification and to establish a list of eligibles.

(Code 1968, § 12-110)

Sec. 14-111. Certification of eligibles.

(a) Upon receipt of written request for certification, the director shall certify to the department director under the direction of the mayor from the

eligible list, or the list most nearly appropriate, the names, addresses, and examination grades of, and any other desirable data.

(b) If any of the number so certified be then not available for appointment, the director shall certify the succeeding name or names from such eligible list until a sufficient number of eligibles to conform with the above formula is certified.

(c) No name shall be certified more than three times to the same department director for the same or similar position except upon written request of that department.

(d) The department director may specify sex only where such restriction is based upon a bona fide occupational qualification.

(e) An eligible who has declined an appointment on the grounds of insufficient salary shall not thereafter be certified for a position at the same or any less salary except upon written request of the eligible.

(f) Vacancies in the classified service shall be filled by promotion, except when the commission deems that the interests of the city may be served better thereby, such vacancies may be filled by the demotion, transfer, reemployment or original employment when applicable.

(g) The eligibles to be certified, subject to the limitations of the preceding section, shall be the highest ranking ones willing to accept employment chosen in this order:

- (1) Former regular employees on a reemployment list whose services terminated only because of budgetary or force-reduction reasons.
- (2) Regular employees on the appropriate promotion list, if any.
- (3) Those on a reemployment list, if any.
- (4) Those on an original employment list.

All names on one of such lists shall be exhausted before names from another list may be certified, but names certified may be those taken from two or more lists, if necessary, to provide the necessary number to conform with the formula prescribed in subsection (a) of this section.

(h) If the appropriate lists do not contain a sufficient number of eligibles to conform with the formula prescribed in subsection (a) of this section, the maximum number of available eligible persons willing to accept appointment shall then be certified. Under such circumstances, the mayor shall not be required to make an appointment from such lists and the director shall then prepare an examination in order to create a new eligible list from which certification shall be made.

(i) The department director shall forward to the director, with due notice of appointments, copies of all correspondence to and from those persons interviewed.

(j) When, upon request for certification, there are no eligibles on an appropriate list, certification may be made at the discretion of the director, and the director may appoint any qualified person available to fill the position.

(Code 1968, § 12-111; Ord. No. 77-1303, § 1, 7-5-77; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-112. Report and effective date of appointments.

An appointment shall be reported immediately to the human resources department on the form prescribed by the commission. The director, after certification of conformity with the rules, shall forward one copy of the form to the department concerned, the payroll section, and the civil service personnel files. An appointment shall become effective as of the date on which the appointee enters upon duty.

(Code 1968, § 12-112; Ord. No. 96-1290, § 9, 12-4-96)

Sec. 14-113. Temporary and emergency appointments.

(a) Whenever a department requires temporary assistance because of a special project, a temporary increase in the work load, or absence of a regular employee, appointments may be made from an appropriate eligible list for the duration of such unusual work. Each such employee shall have the prefix TEMPORARY as part of his title.

(b) The acceptance or rejection by an eligible of temporary appointment shall not affect his standing on the eligible list, but the temporary service may be counted as a part of his probationary period only in case of immediately subsequent, permanent employment in the same position in the same department.

(c) No temporary appointment shall be made for a period of more than three months, but may be extended by the commission for a longer period. No temporary employment shall become permanent unless the employee, at the time of original, temporary placement, came from an eligible list for that position. In case it is desired to convert a temporary appointment into a permanent one, such appointee shall fulfill the requirements covering candidates for original entrance into the service and must be certified by the commission before he may become a regular appointee.

(d) In the event of an emergency which may result in loss of public property or in serious inconvenience to the public, the mayor may direct the commission to select and appoint a person or persons without regard to the rules governing other appointments, but in no case shall such emergency placements be employed for longer than the duration of the emergency and each such employee shall have the prefix EMERGENCY as part of his title.

(e) Successive or consecutive emergency appointments shall be made only with express approval by the commission with a view of limiting a person to a total of 90 working days of such employment.

(f) Emergency appointments shall be reported promptly to the commission with reasons therefor; the commission reserving the right to inquire into the nature of the emergency.

(Code 1968, § 12-113)

Sec. 14-114. Approval of appointments.

(a) Approval by the commission of regular appointments made in conformity with civil service rules and from lists of certifications shall not be required, as certification of eligibles shall be deemed as having fulfilled civil service requirements.

(b) Approval by the commission of temporary appointments shall be required before the civil service commission may certify to the legality of the payrolls upon which such names appear. Such approval should be had before employment of temporary employees begins.

(c) Approval by the commission before employment begins shall not be required in the case of an emergency placement, but each such appointment shall be reported to the civil service commission immediately.

(d) When there is a vacancy in a scientific, managerial, professional, or educational class and there is a shortage of applicants in that class, the commission may approve the appointment of an applicant recommended by the mayor upon satisfactory evidence that the applicant meets the requirements for the class and is qualified otherwise; however, the commission may require the applicant to pass either an assembled or an unassembled examination, or both, to qualify.
(Code 1968, § 12-114)

Sec. 14-115. Transfers.

(a) A department director, with the approval of the mayor, may request the civil service commission to transfer or reclassify within his department any classified employee under his jurisdiction from one position to another position in the same class with the same maximum salary. Transfer or reclassification shall not be allowed until prior approval by the civil service commission. Transfer of a classified employee from a position under the jurisdiction of one department director to a position under the jurisdiction of another department director may be made only upon approval of the civil service commission and both department directors concerned. Any transfer of an employee from a position in a lower class to a position in a class carrying a higher maximum salary shall be deemed a promotion; while any transfer from a position in a higher class to a position in a class carrying a lower maximum salary shall be deemed a demotion and neither may be accomplished except in the manner provided in these rules for making a promotion and for making a demotion. A city employee in a noncivil service position shall be neither trans-

ferred, appointed, nor promoted to a civil service position without first having been qualified by the civil service commission.

(b) When the best interests of the city may be served thereby, the commission may approve transfers, to vacancies, of employees who are about to be displaced for reasons not reflecting upon the efficiency, character, conduct or capacity of those employees.

(Code 1968, § 12-115; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-116. Procedure.

The director shall institute procedures and designate forms for carrying on all of the activities involved in such transactions coming under the jurisdiction of the commission.
(Code 1968, § 12-116)

Secs. 14-117—14-121. Reserved.

DIVISION 9. RULE 9. PROBATION

Sec. 14-122. Duration.

Each original appointment or reappointment to a position in the classified service shall be for a probationary period of 12 consecutive months. Each employee so appointed shall complete the 12 months probationary period, which is to be regarded as a working test period, before being considered a classified employee. Each promotion in the classified service shall be for an additional probationary period of six months, which is also to be regarded as a working test period.
(Code 1968, § 12-122)

Sec. 14-123. Service ratings during probation.

During a probationary period the department director shall observe carefully the performance and conduct of the employee and, if the conduct of the employee is not satisfactory, then the circumstances pertaining to the unsatisfactory performance shall be reported to the civil service commission.

(Code 1968, § 12-123; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-124. Effect of nonpaid absences or transfers during probation.

(a) If an employee is absent without pay for any reason from his work for a period of over 30 days, during the probationary period, the time he is absent shall not count as a part of the period of probation and the employee will be required to serve that additional time as part of his probationary period.

(b) If an employee is transferred during the period of probation from a position in one department to a position in another department, the employee so transferred shall be required to start a new probationary period at the time of his transfer.

(Code 1968, § 12-124)

Sec. 14-125. Removals during probation.

(a) In case the department director deems a probationary employee unable or unwilling to render satisfactory service, or for other sufficient cause, the director of the department, with the approval of the civil service commission, may remove such employee upon written notice to the commission. When any employee is removed for any cause during probationary period, he shall not be entitled to a hearing before the civil service commission.

(b) If a civil service employee is removed during probation, from a position to which he has been promoted, he shall be restored to his former classification in the department in which the employee is presently assigned.

(Code 1968, § 12-125; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-126. Credit for prior service.

The provisions of this section shall be available in any instance in which a position which was not theretofore subject to civil service classification is revised or redesignated by action of the city council or the commission so that it becomes a classified position and the incumbent thereof qualifies for and continues to hold such position without a break in service after its revision or redesignation. Under such circumstances, the commission may, upon recommendation of the department director and the director and a finding that the

duties and responsibilities of the position have not substantially changed, grant credit to the incumbent for all or a portion of his prior service time towards the appointment probation period established pursuant to section 12-122 of this Code.

(Code 1968, § 12-126; Ord. No. 83-1760, § 1(3), 10-26-83; Ord. No. 05-91, § 1, 1-25-05)

Secs. 14-127—14-130. Reserved.

DIVISION 10. RULE 10. PROMOTIONS

Sec. 14-131. General requirements.

Vacancies in the classified service shall be filled, insofar as is practicable, by the promotion of employees within the department in the classified service. The commission shall, in each case, determine the qualifications of the employees recommended by the department director and the civil service commission shall determine which employee is entitled to the promotion. Promotions shall involve a definite change in duties or an increase in responsibilities and shall not be made merely for the purpose of effecting an increase in compensation.

(Code 1968, § 12-131; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-132. Promotional examinations generally.

Promotional examinations shall be open only to employees in the classified service who, at the time of the examination, are serving in other civil service positions and have served for such a period as may be prescribed by the commission. A promotional examination may include employees with specific classifications in all departments or only in the department for which the eligible list is being established, as determined by the commission in each instance. Certification shall be made in the same manner as that prescribed for original appointment. Promotional examinations may, at the direction of the director, consist of one or more of the following parts: Written, oral, mental, and practical performance tests, a special

rating by each candidate's department director and, in some cases, a medical examination as an additional requirement.

(Code 1968, § 12-132; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-133. Notice of promotional examinations.

Whenever the commission orders a written promotional examination to be held, notice of such examination shall be posted in the department or departments in which eligibles are employed. It shall be the duty of the department director concerned to see that each such notice is properly posted at least one week prior to the examination date.

(Code 1968, § 12-133; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-134. Temporary promotions.

An interim or temporary promotion to a higher position, made necessary by reasons of sickness, disability, or other absence of another employee, may be authorized by the commission upon the written request of the department director concerned who shall set forth full information regarding such request. All such temporary promotions, where practical, shall be filled from a promotional list if there is one in effect for the particular class, and shall continue only during such period of sickness, disability or other absence.

(Code 1968, § 12-134; Ord. No. 05-91, § 1, 1-25-05)

Secs. 14-135—14-139. Reserved.

DIVISION 11. RULE 11. LAYOFFS*

Sec. 14-140. What constitutes; notice.

When it is necessary to reduce the number of employees within any department due to reorganization of the department, reduction in funding, reduction in services provided, or for any other

***Editor's note**—Section 1 of Ord. No. 86-614, enacted May 6, 1986, amended Div. 11, Rule 11 to read as set forth in §§ 14-140—14-145 and Exhibit A as herein codified. Prior to such amendment, Div. 11 consisted of §§ 14-140—14-144 which also pertained to layoffs and derived from §§ 12-140—12-144 of the 1968 Code.

Cross reference—Copy of applicable civil service rule provisions to be furnished to laid-off employees, § 2-101.

reason, each employee whose position is to be eliminated shall be so notified, and at the stated time his salary and work shall cease. This shall constitute a layoff. The department director shall notify the employee in writing at least 14 calendar days in advance of the layoff. A copy of the layoff notice shall be forwarded promptly to the director. A suspension, dismissal, discharge or discontinuance of temporary, part-time or seasonal employment shall not constitute a layoff and vice versa.

(Ord. No. 86-614, § 1, 5-6-86; Ord. No. 87-914, § 1, 6-9-87; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-141. Who shall be laid off.

(a) When it becomes necessary to lay off one employee or more in the same classification in a department, the one or ones to be laid off shall be determined by the department director on the basis of this section. The names of all those laid off, except any who are below standard employees, shall be placed on a reemployment list for a period of one year. No employee in a permanent position shall be laid off while any temporary, part-time, seasonal, or emergency employee performing comparable duties is continued in the same department unless the department director determines that the continued use of such employees is necessary due to unpredictable work loads, seasonal or temporary work requirements, or related factors that make the use of permanent full-time employees for the work impracticable or inefficient.

(b) As used in this rule, the following terms shall have the meanings ascribed below:

- (1) *Below standard employee* shall mean any employee, regardless of the employee's term of total continuous employment, who has received overall scoring ratings of less than "satisfactory" (either "below average" or "unsatisfactory") on the most recent job performance review and on any one of the second and third most recent job performance reviews given within the last 36 months prior to the implementation date upon the performance review forms promulgated by the director and approved by the commission. If the last performance review given to the employee

is pending on appeal through the city's grievance process the appropriate hearing officer will be notified and requested to render a decision before the implementation date. If the appeal is still pending on the implementation date then the average of the scores the employee received in the remaining year(s) in the layoff merit rating period shall be used instead of the score on the performance review which is pending on appeal. In any instance in which the foregoing standard would otherwise apply to two performance reviews given to an employee within a period of 330 consecutive days, then the foregoing standard shall instead be based on the last city performance review given that is not pending on appeal as of the implementation date and the last performance review that was given more than 330 days previous to it.

- (2) *Department* shall mean each department, division of a department, office, or division of an office of the city that is listed on the Exhibit A at the end of this division, regardless of whether it actually constitutes a department of the city government, or not.
- (3) *Implementation date* shall be the date established in writing by the mayor for the implementation of a layoff within a department. All computations regarding the layoff shall be based upon the implementation date, and the delay of the actual implementation of the layoff for any reason shall not affect the use of the established implementation date for such computations, unless the mayor elects to establish a new implementation date.
- (4) *Layoff merit rating* shall be the total point score, based upon the overall scoring rating from an employee's job performance review given upon the forms promulgated by the director and approved by the commission, during the calendar year in which the implementation date occurs and for each of the two calendar years preceding the year in which the implementation date occurs. For each of those three years'

performance reviews, the employee shall receive points on a basis that corresponds to the employee's numerical score on the job performance review. If the numerical scoring systems differ between types of job performance review forms, those ratings shall be adjusted to obtain corresponding scoring systems according to standards set by the human resources director.

If an employee received more than one performance review during any such calendar year, then the results of each review for that year shall be averaged on the basis of the number of performance reviews that the employee received during that calendar year. For any year in which an employee did not receive a performance review for any reason including, but not limited to, not being employed by the city, then for that year the average of the scores the employee received in the remaining year(s) in the layoff merit rating period shall be used. If an employee in a classification in the managerial tier that is targeted for layoff has not received any performance reviews during employment with the city, then the department shall perform an unscheduled performance review before the implementation date, and the score on that review shall be multiplied by three to give that employee's total point score. If a job performance review is on appeal through the city's grievance process, the appropriate hearing officer will be notified and requested to render a decision before the implementation date. If the appeal is still pending on the implementation date then the average of the scores the employee received in the remaining year(s) in the layoff merit rating period shall be used instead of the score on the performance review which is pending on appeal. Layoff merit ratings shall be computed for all employees within the department and classification in which a layoff is to be implemented, except those employees in layoff tiers 1 and 2.

- (5) *Layoff tier* shall be a layoff priority group. Each employee within a department and classification in which a layoff is to be implemented will be assigned to a layoff tier. Layoff tiers for those employees in classifications which are not in the managerial tier shall be as follows. Tier number one shall consist of all below standard employees. The second and each successive layoff tier shall be established from employees who are not below standard employees on the basis of time periods computed back from the implementation date and shall be designated in the following manner:

<i>Tier Number</i>	<i>Time Period</i>
Two (2)	Implementation date to one year preceding the implementation date.
Three (3)	One day before the one year preceding the implementation date to the fifth year preceding the implementation date.
Four (4)	One day before five years preceding the implementation date to the ninth year preceding the implementation date.

Each employee who is not a below standard employee shall be assigned to a layoff tier based upon the commencement date of the employee's total continuous employment. In the event that any affected classification includes employees having more than nine years' total continuous employment, then successively numbered tiers of four years shall be established in the same manner as tiers three and four, so that each employee within the classification is assigned to a layoff tier. In the event that the actual implementation of a layoff is delayed beyond the implementation date, then any employee hired after the implementation date shall be assigned to layoff tier number two (2).

- (6) *Managerial tier* shall be a separate tier which consists of employees who occupy

positions within classifications which are assigned to a pay grade that is greater than or equal to pay grade 23, which are designated in the Officials and Administrators EEOC (Equal Employment Opportunity Commission) job category A, and which are designated as a mid-level manager or above on the class description, but shall not include those employees who are excepted from eligibility to civil service classification under Article Va, Section 2 of the City Charter. When a classification in the managerial tier is targeted for layoff within a department, all employees holding positions within that classification in the department shall constitute one tier for the purposes of computing the layoff merit rating.

- (7) Total continuous employment shall be computed from the date of an employee's initial reporting to work with the city as an employee in a permanent position. Total continuous service in current job classification shall be computed from the date of an employee's certification to current job classification. If the employee has had a break in employment, then the total continuous employment or the total continuous service in current job classification shall be computed from the date of the employee's return reporting to work with the city as an employee in a permanent position. A break in employment shall consist of any instance in which the person ceased to be a permanent employee of the city under these civil service rules, except for a military leave authorized under state or federal law or a prior layoff and reemployment under civil service rule 11.

(c) With the exception of employees in those classifications in the managerial tier, employees within the same classification in the department where the layoff is to be implemented shall be laid off on a lowest numbered layoff tier-first out basis, with employees in the first layoff tier to be the first laid off. In the event that there are two or more employees within a given classification and layoff tier and the number of persons to be laid off

within that classification is such that one or more of the employees within that classification and layoff tier need be laid off and one or more need not be laid off, then the person or persons to be laid off shall be determined as follows:

- (1) In the first and second layoff tiers, employees will be laid off on the basis of the commencement of their total continuous employment on a last in-first out basis, with the last commenced to be the first to be laid off. In case of a tie score between two or more employees, then among those employees with the tie score, the procedures specified in (d) below, except for subsection (d)(3), shall apply.
- (2) In the third and each successive layoff tier the employee or employees to be laid off will be determined by their layoff merit rating point score on a lowest score-first out basis with the employee having the lowest score to be the first laid off. In case of a tie score between two or more employees, then among those employees with the tie score, the procedures specified in (d) below shall apply.
- (3) In the managerial tier, employees within the same classification in the department where the layoff is to be implemented shall be laid off on the basis of their layoff merit rating point score on a lowest score-first out basis, with the employee having the lowest score to be the first laid off. In case of a tie score between two or more employees, then among those employees with the tie score, the procedures specified in (d) below shall apply.

(d) If a tie still exists between two or more employees after use of the procedure outlined in (c) of this section, then among those employees with the tie score, the following steps will be utilized in the numbered sequence until the tie is broken, with use of a succeeding step only in the event a tie still exists among two or more employees:

- (1) Employees will be laid off on the basis of the commencement of their total continuous

service in their current job classification on a last in-first out basis, with the last commenced to be the first laid off.

- (2) Employees will be laid off on the basis of their most recent job performance review score on a lowest score-first out basis, with the employee receiving the lowest score to be the first laid off.
- (3) Employees will be laid off on the basis of the commencement of their total continuous employment on a last in-first out basis, with the last commenced to be the first laid off.
- (4) Employees will be laid off on the basis of the date an employee filed an application for current continuous employment with the human resources department on a last in-first out basis, with the last applicant to be the first laid off.
- (5) Employees will be laid off on the basis of total city service, which shall include all periods of permanent employment with the city, on at least total service-first out basis, with employee(s) with the least amount of total city service to be the first laid off.
- (6) Employees will be laid off on the basis of their names selected on a random basis by the human resources director, or his or her designee, on a first selected-first out basis, with the first name(s) selected to be laid off first.

(e) In any instance in which the employees within the same classification in a department have been assigned to perform different work functions, which vary as to tasks performed, equipment operated or in any other manner that affects the transferability of persons between the functions, and the employees have been either:

- (1) Selected for employment or promotion to their assigned work functions on the basis of different formal education qualifications, professional licenses, or specialized technical training, or

- (2) Given specialized training, whether of a formal or on-the-job nature, while employed by the city that is based upon the needs of their work functions,

and the implementation of a layoff on a department-wide basis by classification in the manner contemplated by subsection (b) above would, in the opinion of the department director, require the reassignment of any one or more employees to different work functions in order to effectively staff those activities of the department that will continue to be performed after the layoff, then the department director may exempt one or more employees from the operation of the layoff, if the department director makes a written finding that:

- (1) The exempted employee(s) have educational or training skills or licenses relevant to their work functions that are not possessed by the employee or employees who would otherwise replace them, and
- (2) The retraining of the employee or employees who would otherwise replace the exempted employee(s) would cause a deterioration of service delivery or service quality by the department.

Except as to employees who are exempted in accordance with this subsection, the layoff shall be accomplished in the manner otherwise provided in this rule.

(f) In any instance in which a department has some positions that are funded in whole or in part by virtue of funding received from one or more state or federal grant contracts and other positions that are funded in whole by virtue of funds derived from other general sources of city revenue and a layoff is required due to a reduction or elimination of funding, then the layoff shall be accomplished in accordance with this rule, but in such a manner as to affect only those employees whose positions are funded in whole or in part through the source of funding that has been reduced or eliminated. It shall be the duty of the department director to ensure that each employee who is hired, transferred, promoted, demoted or otherwise assigned into a position that is funded in whole or in part by any state or federal contract or grant in aid shall be notified prior to such assignment that the position will not be wholly

funded by general city revenues and that the employee's continued employment will be subject to the city's continued receipt of funds for the position under the applicable state or federal contract which funds the position.

A position shall be considered to be funded by a state or federal grant contract for purposes of the administration of this subsection regardless of whether the grant contract provides for the receipt of the funds in advance of their expenditure by the city, or provides for the expenditure of city funds from other city sources with their subsequent reimbursement pursuant to the terms of the grant contract, or provides for any combination of advance funding and reimbursement funding.

(Ord. No. 86-614, § 1, 5-6-86; Ord. No. 87-914, § 1, 6-9-87; Ord. No. 91-1018, § 1, 7-3-91; Ord. No. 96-1290, §§ 10, 11, 12-4-96; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-142. Reemployment list; reemployment.

The names of persons officially filling permanent civil service positions at the time such positions are abolished, except those who are below standard employees, shall be placed on a reemployment list in reverse order of their layoffs and shall remain on this list for a period of one year. When vacancies occur in positions with the same classification or any other classification which is determined by the director to require equivalent job skills within the same or any other department, except as provided below the last one or ones laid off shall be the first reemployed, and no other names shall be certified for those classifications until the one or ones laid off have been given a reasonable opportunity to accept reemployment with the city.

- (1) In any instance in which there exists a reemployment list for a classification, and an employee has been or will be voluntarily or involuntarily demoted to that classification within the department, the department director may request and the commission may approve the certification of the demoted employee to a position within that classification and thereby bypass employees on the reemployment list.

(2) In any instance in which the reemployment list for a given classification contains employees who before the layoff did not work within the department in which they would be reemployed, the department director may request and the commission may approve the certification of only those employees on that reemployment list who worked in that department at the time they were laid off, and thereby bypass all employees on the reemployment list who were not employed in that department at the time they were laid off. If vacancies which the department seeks to fill still exist after certification of all those employees who worked in the department at the time they were laid off, then for those remaining vacancies the last employees laid off in that classification within any other department shall be the first reemployed.

(3) In any instance in which the duties assigned to a classification within a department will require the performance of different work functions, which vary as to tasks performed, equipment operated, or in any other manner that affects the transferability of persons between the functions, and any one or more employees on the reemployment list were, before the layoff, either:

- a. Selected for employment or promotion to the same or similar work functions on the basis of different formal education qualifications, professional licenses, or specialized technical training, or
- b. Given specialized training, whether of a formal or on-the-job nature, while employed by the city that substantially meets the needs of the work functions to be performed in the department.

and the reemployment of employees based strictly on their numerical position on the reemployment list would, in the opinion of the department director, require the retraining, licensing, or additional education of any one or more employees

on the reemployment list to effectively staff those activities of the department that will be performed, then the department director may request that the commission bypass one or more employees on the reemployment list. The commission may bypass the employee(s) only if it finds that:

- a. The employee(s) who will be bypassed do not have educational or training skills or licenses relevant to the work functions required for the department that are possessed by the employee(s) who the department requests be employed, and
- b. The retraining, licensing or additional education of the employee(s) who will be bypassed would cause a deterioration of service delivery or service quality by the department.

(4) In any instance in which, in the opinion of the department director, an employee on the reemployment list is not physically capable of performing the duties which will be performed in a department after reemployment, the department director may request that the commission bypass that employee. In reviewing such request the commission may order that the employee submit to a physical examination at city expense or provide other medical documentation of ability to perform the duties which will be required of that classification within the department. The commission may bypass that employee only if it finds that the employee is physically incapable of performing the duties which will be required of that employee's classification within that department and that the employee's physical condition cannot reasonably be accommodated by the department.

(Ord. No. 86-614, § 1, 5-6-86; Ord. No. 87-914, § 1, 6-9-87; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-143. Transfer or demotion in lieu of layoff.

An employee who is determined to be in line for layoff may be transferred, before the effective

date of such layoff, to a position in the same classification in a different department or to a position in any other classification for which the employee is eligible in the same department, in lieu of being laid off, such transfer to be governed by conditions or procedures prescribed in these civil service rules and the availability of suitable positions that the department directors desire to fill. If a permanent employee is in line for layoff from a position to which he was promoted within the preceding 12 months, he may be demoted to his previous classification, provided that there is a vacant position available in such classification that the department director desires to fill and further provided that the employee is willing to accept a pay reduction to the rate applicable for the classification to which the employee will be demoted. The employee who accepts a demotion shall be placed on a reemployment list and shall remain on this list for one year. The employee shall be placed on the reemployment list based on seniority and performance rating as if they had actually been laid off.

(Ord. No. 86-614, § 1, 5-6-86; Ord. No. 87-914, § 1, 6-9-87; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-144. Filing of plan, appeal.

(a) Not less than five city working days prior to the date that the laid off employees are formally notified in writing of their layoff under this rule, the department director implementing such layoff shall file a written plan reflecting such layoff with the director as the secretary to the commission and with the director of the affirmative action division of the mayor's office. Such plan shall set forth:

- (1) Reason for the layoff and the source of funding which was reduced, if applicable;
- (2) An organizational plan or diagram for the department affected by the layoff as it appeared prior to the layoff;
- (3) The names and the current home addresses and telephone numbers and classifications of the employees who are to be laid off;
- (4) For each classification and layoff tier in the department in which employees are to be laid off the computation of each em-

ployees' (whether laid off or not) layoff merit rating score and layoff tier pursuant to section 14-141; and

- (5) A copy of any exemption designations made pursuant to section 14-141.

(b) Each layoff process accomplished under this rule that causes the layoff of any permanent employee shall be subject to review by the commission upon the request of any laid off permanent employee filed in writing with the director within ten calendar days after the date that the employee is given written notice of the layoff. If the tenth day falls on a Saturday, Sunday, or holiday, the time for filing the request for review shall be extended to the next working day. In this paragraph "*permanent employee*" shall mean a full-time regular employee who is serving in a classified civil service position who has completed the one-year probationary period applicable to new and rehired civil service employees but shall not be construed to mean any employee excepted from civil service classification pursuant to Article Va, Section 2 of the City Charter. Such request shall specify the reason that the laid off employee believes that the layoff was not properly accomplished in accordance with this rule. Any request which lacks such specificity may be rejected by the commission. The chairman in consultation with the other members and the director shall determine the type of review to be conducted, establish a date therefor, and determine the names of those persons who would be affected by the appeal if meritorious. The director shall cause a written notice of the review proceeding to be mailed to each person that may be designated by the commission, at the address furnished in the layoff plan, by certified U.S. mail, return receipt requested. Any of the persons so designated may intervene in the review by filing a written statement of position on the matter with the director by the day prior to its setting. To the extent practicable, only one review shall be conducted for each layoff process. The commission shall limit its inquiry to the issue of whether the layoff was accomplished as to all employees involved, whether laid off or not, in accordance with this rule, and it shall not substitute its judgment for that of the department director as to any decision made within the legitimate discretion of the depart-

ment director. The commission shall enter a written decision as soon as practicable after the conclusion of the review but in no event later than the twentieth day next following the date that the review is concluded. The commission may uphold the layoff as presented, uphold it in part and change it in part or take any other action necessary in order to conform the layoff to this rule. In accordance with its determination the commission may order the reinstatement of any laid off employee with back pay and the layoff of any other employee in lieu thereof. The filing of an appeal hereunder shall not defer the implementation of the layoff. However, the mayor may defer the implementation of the layoff process, in whole or in part, upon written recommendation of the director and the commission chairman that it be deferred due to an apparent violation of this rule. Layoffs reviewed and sustained by the commission shall be final and shall not be subject to any other administrative recourse, review, or appeal process.

(Ord. No. 86-614, § 1, 5-6-86; Ord. No. 86-737, § 1, 5-27-86; Ord. No. 87-914, § 1, 6-9-87; Ord. No. 87-1913, § 1, 11-18-87; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-145. Review by affirmative action division.

The mayor shall cause any plan for the implementation of a layoff to be reviewed by the affirmative action division of the mayor's office to ensure that no employee is denied any benefit of employment or granted any preference on the basis of race, color, creed, sex, religion, national origin, handicap or political or fraternal affiliation in the implementation of the layoff. If the commission finds that a denial of benefits or preference was undertaken for any of the foregoing reasons, then it shall order the reinstatement of the wronged employee(s) with back pay and the layoff of other employee(s) in lieu thereof. In order to facilitate such review the department director shall file a document reflecting the racial and sexual makeup of the department, including the employees to be laid off, with the documents furnished to the director of the affirmative action division of the mayor's office.

(Ord. No. 86-614, § 1, 5-6-86; Ord. No. 87-914, § 1, 6-9-87; Ord. No. 05-91, § 1, 1-25-05)

EXHIBIT A

CITY DEPARTMENTS

Aviation
Affirmative Action
Building Services
Citizens' Assistance
City Controller
City Council
City Secretary
Convention and Entertainment Facilities
Finance and Administration
Fire
Health and Human Services
Housing and Community Development
Houston Emergency Center
Human Resources
Information Technology
Legal
Library
Mayor's—Administration
Municipal Courts—Justice
Municipal Courts—Administration
Parks and Recreation
Planning and Development
Police
Public Works and Engineering

Solid Waste Management

(Ord. No. 86-614, § 1, 5-6-86; Ord. No. 87-914, § 1, 6-9-87; Ord. No. 90-635, § 45, 5-23-90; Ord. No. 93-514, § 30, 5-5-93; Ord. No. 96-50, § 2, 1-17-96; Ord. No. 96-1290, § 12, 12-4-96; Ord. No. 99-378, § 6, 4-21-99; Ord. No. 02-528, § 141., 6-19-02)

Secs. 14-146—14-149. Reserved.

DIVISION 12. RULE 12. RESIGNATIONS**Sec. 14-150. Written resignation to be requested with copy forwarded to director.**

An employee in good standing who decides to leave the service for any reason shall be asked by his supervisor or department director for a formal resignation in writing and a copy of same shall be forwarded to the director.

(Code 1968, § 12-150; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-151. Investigation; treatment of forced resignation as removal.

The commission is authorized to make such investigation of the resignation as it may think advisable. If it develops that a separation reported as a resignation did not result from the voluntary act of the employee, the commission shall notify the mayor and may treat the separation as a removal and the provisions of these rules relating to removals shall apply.

(Code 1968, § 12-151)

Sec. 14-152. Forfeiture of rights; reemployment.

Any employee in the classified service who voluntarily resigns his position shall forfeit all rights which he might have had under civil service. He can be reemployed in the classified service only in the manner prescribed by the rules governing original appointment, except that the commission may decide, after considering the recommendation of the department director, that his name may be returned to the original eligible list, if still in existence, or to a new eligible list for that classification. However, such eligibility for reemployment shall not take precedence over the rights of those who were laid off for budgetary or force-reduction reasons and are on a reemployment register.

(Code 1968, § 12-152; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-153. Withdrawal of resignation.

An employee, upon his written request before the effective date thereof and with the approval of the department director, may be allowed to withdraw his resignation.

(Code 1968, § 12-153; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-154. Reinstatement of retired employees.

No employee in the classified service who has been retired on pension for service retirement shall be eligible for reinstatement to active duty. Employees retired for disability shall file with the commission a letter requesting reinstatement, together with a physician's statement stating that the pension employee is now physically fit to resume his duties in the position from which he was retired. The commission shall transmit the letter and physician's certificate to the municipal employees pension board for its consideration. The pension board, after due investigation and satisfactory physical examination of the pensioned employee, shall notify the civil service commission that the pensioned employee is physically qualified to have his name placed on an eligibility register for his former position or a lower position in the department from which he was pensioned.

(Code 1968, § 12-154)

Sec. 14-155. Absence from work without notice considered as resignation.

Any employee who is absent for three consecutive working days, without having notified his immediate superior, shall be considered to have resigned from the employment of the city.

(Code 1968, § 12-155)

Sec. 14-156. Candidacy for and holding of elective office.

(a) Any employee in the classified or unclassified service of the city, except appointed or elected officers, who is a candidate for any elective office, whether the same be federal, state, county or city, either paid or nonpaid, shall immediately, in writing make such candidacy known to the director. It shall be the duty of the director to determine if the candidacy poses a conflict of interest with the employee's city employment. If any such conflict is found, the director shall provide the employee's department director with a full report of his findings together with any recommendation that he may have regarding disciplinary action. If the department director concurs that there is a conflict of interest, he shall forthwith report such

findings to the mayor together with any recommendation he may have regarding disciplinary action. The mayor shall finally determine whether a conflict of interest with the employee's city job exists and whether disciplinary action is appropriate. Disciplinary action shall then be handled consistent with the City Charter and these rules.

(b) In the event that the director determines that the employee's candidacy results in no conflict of interest, and the employee is elected to the office sought, the same procedures as outlined above where candidacy presents a conflict shall be followed to determine if the holding of the office presents a conflict of interest and if disciplinary action is appropriate.

(Code 1968, § 12-156; Ord. No. 76-142, § 1, 2-3-76; Ord. No. 05-91, § 1, 1-25-05)

Secs. 14-157—14-161. Reserved.

DIVISION 13. RULE 13. SERVICE RATINGS

Sec. 14-162. System.

The commission will assume that all employees are performing their assigned duties in a satisfactory manner unless and until the department director notifies the commission to the contrary. (Code 1968, § 12-162)

Secs. 14-163—14-167. Reserved.

DIVISION 14. RULE 14. LEAVES OF ABSENCE AND OUTSIDE EMPLOYMENT

Sec. 14-168. Attendance; workweek; overtime compensation, etc.

(a) Definitions. Unless otherwise indicated, the following words shall, for purposes of this section, have the following meanings:

- (1) *Compensatory time or compensatory time off.* Hours during which eligible employees are not working but which are counted as hours worked during the applicable workweek for purposes of overtime compensation and for which the employee is compensated at the employee's regular rate.

- (2) *Eligible employee.* All employees of the City of Houston other than exempt and noncovered employees as defined in this subsection and those employees subject to article 1269m, Texas Revised Civil Statutes, and classified as fire protection or law enforcement personnel.

- (3) *Exempt employees.* All executive, professional, administrative and seasonal recreation employees of the City of Houston who are exempted from the overtime compensation requirements of the Fair Labor Standards Act of 1938, as amended and the pertinent regulations and opinions interpreting that act and who have been designated as such by the human resources director and the civil service commission.

- (4) *Non-covered employees.* All employees of the City of Houston who:

- a. Are excluded from coverage under the Fair Labor Standards Act of 1938, as amended, and the regulations and administrative opinions interpreting that act; and
- b. Are designated as such by the human resources director and the civil service commission. In reaching the determinations required by this subsection or subsection (a)(3) above, the director and the civil service commission shall be guided by the various criteria which are applied to determine whether overtime must be paid under the wage and hour provisions of the Fair Labor Standards Act of 1938, as amended.

- (5) *Overtime.* Time worked in excess of 40 hours in a workweek.

- (6) *Regular rate of pay.* Regular rate of pay shall include:

- a. Base pay;
- b. Longevity pay; and
- c. Shift differential pay.

The term "regular rate of pay" shall not include compensation excluded

under Section 7(e) of the Fair Labor Standards Act of 1938, as amended or the interpretative regulations and administrative or judicial opinions construing that section.

- (7) *Workweek.* The workweek shall consist of 40 hours of actual work within the consecutive one hundred 68-hour period beginning with the day shift on Saturday.
- (8) *Time actually worked or actual work.* The time the employee is actually on duty or on a council declared holiday, on authorized sick leave, vacation leave, compensatory time off, death in the family leave or any other authorized leave.

(b) All departments of the city shall maintain accurate, complete and permanent records of all employee attendance and time actually worked during each work week. Each department director shall make such reports of attendance and time actually worked as may be prescribed by the civil service commission. Department directors shall certify the correctness of the reports. The reports shall be forwarded to the human resources department on a weekly basis.

(c) All eligible employees of the City of Houston shall be compensated for working overtime beyond their regularly scheduled workweek by the payment of either monetary compensation at the rate of 1½ times their regular rate of pay or compensatory time at the rate of 1½ hours for each overtime hour worked. The following shall apply to the payment of overtime compensation:

- (1) The department director of the department in which the employee works shall verify that the overtime is needed to complete a required city service or operation.
- (2) The department director may determine whether overtime shall be paid in cash or compensatory time. Where overtime is paid in cash it shall be paid in the pay period in which it is earned or as soon thereafter as is possible, taking into consideration both the workweek and the payroll system used.

(3) Where the employee is granted compensatory time the following shall apply:

- a. The number of hours of compensatory time which may be accumulated shall not exceed 240.
- b. Accrued compensatory time which is given must be used within 120 calendar days from the date accrued, provided that it does not unduly disrupt departmental operations.
- c. Eligible employees shall be paid for accrued compensatory time not taken within 120 days from the date of accrual. Such payment shall be in cash at the greater of:
 - 1. The employee's average regular rate of pay over the employee's last three years of employment by the city preceding the date of payment; or
 - 2. The employee's regular rate of pay for the pay period immediately preceding the date of payment.

Such payment shall be made in the pay period following expiration of the 120-day period.
- d. Each department shall maintain detailed records of the accumulation and use of compensatory time on a form prescribed by the human resources director.
- e. Accumulated compensatory time shall be used in accordance with the first-in-first-out (FIFO) accounting principle.
- f. Any compensatory time accrued prior to April 15, 1986 and not used shall be carried on the records of the department until such time as it is used by the employee. The employee shall not be entitled to monetary compensation for any compensatory time accrued prior to April 15, 1986.

(d) A department director, or a designated subordinate may, subject to the operational requirements of the department, require an employee to work on a holiday.

- (1) An employee who is scheduled to work on a holiday may be given a day off in lieu of the holiday or the employee shall receive half pay in addition to regular pay for the hours actually worked on the holiday. The department director shall determine whether the scheduled time worked on the holiday shall be paid in cash or in time off. Where time is paid in cash, it shall be paid in the pay period in which it is earned or as soon thereafter as possible. When time off is given, it must be granted and taken within 120 calendar days of the holiday.
- (2) An employee who is called to duty on a holiday by virtue of an operational emergency shall be paid time and one-half for the hours actually worked on such holiday in addition to regular pay for the holiday.
- (3) Where an employee's regularly scheduled day off falls on a holiday, the employee may be given a day off in lieu of the holiday or the employee may receive straight-time payment equal in value to the employee's regularly scheduled workday. The department director shall determine whether the employee shall be paid for the holiday or be given a day off at a later date. For purposes of computing overtime, cash payment granted will not be considered payment for hours worked. If a day off in lieu of the holiday is granted, it must be granted and taken within 120 calendar days of the holiday or be forfeited.
- (4) For purposes of scheduling a holiday where an employee is unable to take the holiday as specified in (d)(1) or (d)(3) above, a holiday shall have an hour value equal to the number of hours in the employee's regularly scheduled shift or workday. However, for purposes of computation of overtime, the holiday shall have a value of

eight hours and an employee shall be eligible for overtime only for hours that he or she was on duty and at the workplace.

- (5) When a council declared holiday occurs during any paid leave of absence (vacation, sick time, injury on duty, etc.) the holiday is considered observed and that day's absence will not be charged against the paid leave.

(e) Any employee who is exempt and, as a result, not eligible for overtime pay as prescribed in this section, may, notwithstanding any other provisions of this section to the contrary, be eligible for compensatory time on a straight time (hour-for-hour) basis, upon the recommendation or their department director and the approval of the human resources director, subject to the following criteria:

- (1) The employee is in a classification assigned to pay grades 24 and below.
- (2) The overtime work must be performed under unusual circumstances, which shall mean additional hours not ordinarily required to perform the employee's regularly assigned tasks including, but not limited to, unscheduled work hours on a council declared holiday or work performed over a confined period of time due to a special project assignment or a condition of emergency.
- (3) An employee may not receive more than 40 hours of compensatory time hereunder in any calendar year quarter.
- (4) Compensatory time granted under this subsection and its use shall be reported to the human resources director in accordance with subsection (c)(3)d., above.
- (5) Any compensatory time granted must be used within 120 calendar days following the payroll period in which it was earned, and the employee's department director shall afford the employee a reasonable opportunity to use the time within that period. Compensatory time that is not used within the 120-day period is forfeited.

- (6) Compensatory time granted hereunder may not be converted to any other form of leave benefit or be paid as a cash benefit under any circumstances, including the death, resignation or termination of the employee.
 - (7) The human resources director may, subject to the review and approval of the mayor, issue administrative guidelines to the department directors for the granting and reporting of such compensatory time.
- (f) Under certain extraordinary circumstances, the mayor may extend, amend and augment the above requirements in the following manner:
- (1) The mayor will declare that an extraordinary and/or catastrophic condition exists and will order the human resources director, in consultation with the appropriate department directors, to issue an event-specific procedure to provide compensatory time to certain exempt employees.
 - (2) The procedure will extend eligibility for compensatory time to exempt employees in specified pay grades required to address the extraordinary condition, but shall in no case, specify pay grades beyond pay grade 26.
 - (3) Maximum hours accumulated in a calendar year quarter may be increased, but shall in no case exceed 60 hours.
 - (4) The time period for using the compensatory time accumulated under this special subsection may be increased, but shall in no case extend beyond 365 calendar days from the pay period in which the compensatory time was granted.
- (g) Notwithstanding the provisions of section 14-168(e), full-time exempt employees may be eligible to be compensated in cash in the form of special assignment pay for time worked in excess of 40 hours in one week, subject to the following limiting criteria:
- (1) The work performed must be at a city-operated health clinic facility that is open to the public and provides a service to the public;
 - (2) The work performed by the full-time, exempt employee must directly involve providing critical service to the public at such a facility;
 - (3) The hours worked must be in addition to the normal 40 hours of the work week; and
 - (4) The employees must be employed by the city in a licensed medical professional capacity.
- Special assignment pay is subject to approval by the human resources director and requires conclusive justification by the director of the department requesting the special assignment pay. Authorized special assignment pay will be reviewed on an annual basis by the human resources director in conjunction with the requesting department. When authorized, the amount of assignment pay will be established on an individual basis for each affected classification by the human resources director but may not be payable at more than 1½ times the employee's regular hourly rate of pay. Authorized assignment pay will be funded by the requesting department's personnel budget.
- (Code 1968, § 12-168; Ord. No. 73-2017, § 1, 10-10-73; Ord. No. 73-2069, § 1, 10-17-73; Ord. No. 73-2606, § 1, 12-26-73; Ord. No. 74-1173, § 1, 7-9-74; Ord. No. 77-1304, § 1, 7-5-77; Ord. No. 77-1412, § 1, 7-19-77; Ord. No. 8-305, §§ 1, 2, 2-19-80; Ord. No. 83-1231, § 1, 8-9-83; Ord. No. 83-1760, § 1(2), 10-26-83; Ord. No. 84-144, § 1, 1-31-84; Ord. No. 85-894, § 1, 6-13-85; Ord. No. 86-488, § 1, 4-9-86; Ord. No. 86-516, § 1, 4-15-86; Ord. No. 88-31, §§ 1, 2, 1-6-88; Ord. No. 92-1437, § 1, 11-4-92; Ord. No. 93-1267, § 1, 10-13-93; Ord. No. 96-1290, §§ 13—16, 12-4-96; Ord. No. 01-1143, § 1, 12-12-01; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-169. Reserved.

Editor's note—Former § 14-169, which pertained to sick leave for city employees, was repealed by § 1 of Ord. No. 84-1962, enacted Dec. 19, 1984. The repealed provisions derived from § 12-169 of the 1968 Code and Ord. No. 71-1593, § 1, enacted Sept. 1, 1971; Ord. No. 72-1729, § 1, enacted Sept.

26, 1972; Ord. No. 75-3, § 1, enacted Jan. 2, 1975; Ord. No. 75-1463, § 1, enacted Aug. 19, 1975; and Ord. No. 76-1440, § 1, enacted Aug. 31, 1976.

Sec. 14-170. Vacations.

(a) Permanent employees in the classified and unclassified service who regularly work the prescribed work week for their department shall be allowed vacation with pay in accordance with the employee's service time and the following schedule:

Years 1 through 4	80 hours
Year 5	120 hours
Years 6 and 7	128 hours
Years 8 and 9	136 hours
Years 10 and 11	144 hours
Year 12	152 hours
Year 13	160 hours
Year 14	168 hours
Year 15	176 hours
Year 16	184 hours
Year 17	192 hours
Year 18 and beyond	200 hours

Service time for purposes of the foregoing accrual rates shall be based upon the employee's total eligible length of service with the city, and for a rehired employee credit shall be afforded for prior service time. Accruals shall be allocated on a fractional basis per pay period, with applicable service time adjustments commencing on the first pay period following the employee's service time anniversary date. Accruals during the first six months of service shall be subject to subsection (c) below.

Accruals of vacation time shall be limited as follows:

- (1) Except as provided in item (2) below, accruals of vacation time shall be limited to a maximum of 360 unused hours.
- (2) Persons who are actually employed by the city on October 1, 2003, and who have a commencement date for vacation benefits purposes that is prior to January 1, 2000, shall be subject to an accrual limit of 720

unused hours for so long as they remain continuously employed by the city without a gap in service.

Once the applicable limit is reached, accruals shall be suspended and shall not recommence until the employee reduces the balance by use of benefits.

(b) When vacation absence is requested and approved by the commission, the absence during that period shall not be converted to any other type of authorized absence, such as absence with pay, without pay, or sick or injury leave, without approval of the civil service commission.

(c) No employee will accumulate any vacation leave until he has been in the city's service for a period of six months. If he continues in the city's service beyond said six months' period, such employee will be allowed such vacation leave as would have accrued during such six months' period of time.

(d) *Reserved.*

(e) Vacation leave may be accumulated to a total of 360 or 720 working hours, as applicable, subject to the following:

- (1) Each employee of the city shall, upon termination of employment, receive in a lump sum payment, the full amount of his salary for his unused accrued vacation leave. If the termination results from the death of the employee, then the amount shall be payable to the beneficiaries of the employee.
- (2) Each employee, upon leaving the employment of the city, shall be paid accumulated vacation in the amount to be determined by taking the average of the hourly base pay of the employee, plus the longevity rate he has attained and has received or been entitled to receive during his last 60 calendar days of employment; provided, however, that the employee has received, for at least another 60 calendar day period of time, a higher base pay than that which he was paid during his last 60 calendar days of employment, then the amount of such payment shall be determined by taking the average of the hourly

base pay of the employee for the 60-day calendar period for which he was paid a greater hourly base pay, plus the longevity rate he has attained. The computation of the "hourly base rate of pay" shall be based upon the hourly equivalent for 80 hours of scheduled work (excluding overtime) per biweekly pay period, regardless of the actual work hours scheduled per day. For a rehired employee, all computations shall be based upon the employee's then current term of service.

(f) Employees who take an extended leave of absence without pay for personal reasons, consisting of 80 or more hours of absence, shall not accumulate vacation allowances during such absences.

(g) The provisions of this section are inapplicable to police officers and fire fighters serving in positions that are classified under Chapter 143 of the Texas Local Government Code. Vacation leave benefits for employees so classified shall be as provided by applicable provisions of Chapter 34 of this Code, the aforesaid Chapter 143, and any applicable agreements established between the city and employee bargaining groups under Chapter 143.

(Code 1968, § 12-170; Ord. No. 70-137, § 1, 1-28-70; Ord. No. 71-1593, § 2, 9-1-71; Ord. No. 75-3, § 2, 1-2-75; Ord. No. 75-139, § 2, 1-28-75; Ord. No. 90-1138, § 1, 9-19-90; Ord. No. 96-1076, §§ 1-4, 10-16-96; Ord. No. 03-923, §§ 1-4, 10-1-03)

Sec. 14-171. Leave with pay.

(a) Attendance of permanent employees at conventions, conferences and meetings of like nature is not to be considered a leave from duty but shall be noted on the payroll and such attendance must be authorized by the mayor.

(b) In the case of death in the immediate family, the department director may excuse an employee for as many as three calendar days. Immediate family shall include father, mother, sister, brother, husband, wife, child, grandparents, and other relatives if, in the opinion of the department director, such employee's presence due to his individual relationship and the circumstances of the case, would be required. Such

absences and the reasons therefor must be reported to the human resources director on forms prescribed by his office.

(c) Absence of full-time employees during religious holidays may be charged to vacation time, or debited to overtime the employee may have accumulated; but such absences must be approved by the department director and reported promptly to the human resources director.

(d) Permanent employees who leave to serve as members of the uniformed military forces of the United States are to be given pay for whatever time they may have accumulated as vacation time prior to their leaving but shall not accumulate leaves with pay during absences which extend for periods of longer than one month unless otherwise provided by law.

(Code 1968, § 12-171; Ord. No. 73-2606, § 2, 12-26-73; Ord. No. 90-1138, § 3, 9-19-90; Ord. No. 96-1290, § 17, 12-4-96; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-172. Leave without pay; voluntary leave without pay program.

(a) Department directors may grant, upon good reason, leaves of absence without pay for as many as 14 consecutive calendar days for permanent employees in the classified or unclassified service. All leaves in excess of 14 calendar days shall be reported promptly to the civil service commission on forms prescribed by the commission. Civil service commission approval of leaves without pay extending for more than ten working days shall be required before such leaves shall be authorized. The commission, with the exception of those leaves known as military leave, shall not approve of more than 90 consecutive calendar days of leave at any one time, but the civil service commission may subsequently approve extensions of a leave as long as a total of 180 calendar days of leave without pay in one 12-month period is not exceeded. Leaves without pay extending for more than 180 calendar days shall be authorized only after the request for the same is approved by the city council. A leave for less than 180 days and more than 14 calendar days may be cancelled by the civil service commission upon reasonable notice to the employee.

(b) Employees who begin a leave on Monday shall be paid for the preceding Saturday and Sunday. Employees who begin a leave on Tuesday or other week day which immediately follows a council-approved holiday, or who return from a leave on the day immediately following such a holiday, shall be paid for that holiday. Saturdays, Sundays, off-days and holidays which come during a leave without pay shall be without pay, as also shall Saturdays, Sundays and off-days which terminate a leave.

(c) If an employee returns to work before his leave expires, the employee's department director shall notify promptly the human resources department in writing, and, furthermore, the employee's department director will notify the human resources department in writing if an employee fails to return on the working day next following the end of this leave. Failure to return within three days from a leave shall be taken as evidence of a resignation without notice.

(d) In time of war or emergency, an employee who serves in the uniformed military forces of the United States shall be granted a military leave without pay but shall be eligible for reinstatement to his former position only if he is able to present to the civil service commission a certificate of honorable discharge within 90 days after his discharge, is physically and mentally qualified for reinstatement, and if his services with the military forces began at or about the time he left the city's service therefor. If and when he is reinstated, he shall receive full seniority credit for the time he was absent for military service. Physical or mental incapacity to perform his former duties shall not make him ineligible for placement in some other work provided he is qualified therefor.

(e) The mayor is hereby authorized to implement a voluntary leave of absence without pay program and to develop procedures for voluntary leaves consistent with section 14-172(a) through 14-172(d) of this chapter. Any such voluntary leave of absence without pay shall be appropriately noted on each affected employee's attendance records and will in no way be regarded as an unauthorized absence or a disciplinary action, nor shall such leave affect the employee's accrual

of sick and vacation leave or eligibility for health insurance benefits. No employee's base pay or salary, as that term is defined in Art. 6243g(2)(b) Tex. Rev. Civ. Stat. Ann., shall be deemed to be reduced by the application of this subsection 14-172(e) to such employee.

(Code 1968, § 12-172; Ord. No. 88-581, § 1, 4-13-88; Ord. No. 96-1290, § 18, 12-4-96; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-173. Outside employment of employees.

The commission will not permit any member of any department to contract for, or be engaged in, any work of any kind after regular working hours for compensation, unless specifically authorized to do so by his department director, and under no circumstances will the department director approve a request permitting a member of his department to hold a full-time or part-time position which would deprive another from regular employment. The department director will be required to maintain in his office a permanent record of all outside employment which has been authorized.

(Code 1968, § 12-173; Ord. No. 05-91, § 1, 1-25-05)

Secs. 14-174—14-181. Reserved.

DIVISION 15. RULE 15. DISCIPLINARY ACTIONS GENERALLY*

Sec. 14-182. Removal; demotion; suspension.

(a) A department director may terminate, demote, reduce in pay or temporarily suspend for any period of time any non civil service employee in his department (or division), which action shall not be subject to appeal or review by the commission.

(b) A department director may, for just cause, indefinitely suspend, demote, or reduce in pay, any civil service employee in his department (or division) which action shall be subject to appeal and review by the commission pursuant to the authority vested in it by the Charter and these rules.

*Charter reference—Removal of employees, Art. Va, § 3.

(c) A department director may temporarily suspend without pay any civil service employee in his/her department (or division) for any period of time not to exceed 90 days. An employee temporarily suspended for up to 15 calendar days, shall not have a right of appeal before the commission, but civil service employees may request a review and hearing which may be granted at the discretion of the commission. An employee temporarily suspended for 16 to 90 calendar days shall have a right of appeal before the commission pursuant to the authority vested in it by the Charter and these rules.

(d) No indefinite suspension, demotion or reduction in pay of any civil service employee shall become effective until the employee has been given an opportunity by his/her department director to explain the conditions or actions which prompted consideration of one or more of these disciplinary actions. The department director shall give to the employee written notice of the indefinite suspension, demotion or reduction in pay, the effective date thereof, and the reasons or grounds for such action with a copy of the notice to the commission. The disciplinary action shall then become effective immediately, but the employee shall retain the right of appeal to the commission as prescribed in these rules. After hearing the appeal, the commission shall either sustain the action, lessen the penalty, increase the penalty, or reject the action of the department director. The decision of the commission shall be final. (Code 1968, § 12-182; Ord. No. 05-90, § 1, 1-25-05; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-183. Violation of certain standards of conduct to result in disciplinary action.

Any civil service employee, either full- or part-time, may be disciplined under the provisions of subsections 14-182(a) and (b), for violating any of the standards of conduct enumerated and listed hereinbelow. Any noncivil service employee, either full- or part-time, may be disciplined at the discretion of the employee's department director and the mayor for violating any of the following standards of conduct:

(a) An employee shall not:

- (1) Accept or solicit any money, property, service or other thing of value by way of gift,

favor, loan or otherwise which the employee knows or should know is being offered or given with the intent to influence said employee in the discharge of official duties.

- (2) Accept or solicit any money, property, service or other thing of value from a private person or group of people in return for having exercised, performed or failed to perform official duties. Excepted from this prohibition are regularly scheduled wages and other employee benefits paid or given to an employee of a private person or company while such employee is working for the city as a loaned executive.
- (3) Engage in any business or professional activity which might tend to impair independence of judgment in the discharge of official duties.
- (4) Engage in any outside employment without first securing approval, in writing, from the department director.
- (5) Invest or hold any investment or interest directly or indirectly in any financial, business, commercial or other transaction, which creates or might reasonably tend to create a conflict between the public trust held as an employee of the city and the employee's private interests.
- (6) Disclose confidential information concerning the property, operations, policies or affairs of the city, nor use such confidential information to advance the personal interests, financial or otherwise, of said employee or others.
- (7) Use one's official position or the city's facilities, equipment or supplies, nor use or attempt to use one's official position to secure special advantage, privilege or exemption for the employee or others.
- (8) Negotiate for or accept future employment with any person, firm, association or corporation which has a substantial interest in any proposed ordinance or decision within such person's area of responsibility and upon which the employee may or must act or make a recommendation.

- (9) Represent, directly or indirectly, any private person, group or interest before any agency of the city, except in matters of purely civic or public concern and when doing so without compensation or remuneration.
- (10) Represent directly or indirectly, any private person, group or interest in any action or proceeding against the interests of the city, or in any litigation in which the city or any agency thereof is a party. However, this provision shall not prohibit representation by a group, firm or organization the employee is associated with if such employee does not participate in the action proceeding or litigation in any manner.
- (11) Represent, directly or indirectly, any private person, group or interest in any action or proceeding in the municipal courts of the city which was instituted by a city officer or employee in the course of official duties.
- (12) Violate any provision or set of provisions of a departmental code of ethical conduct promulgated pursuant to subsection (f) hereinbelow for the city department of which the employee is a member.

(b) If an employee has a personal interest, direct or indirect, financial or otherwise, in any decision pending before such employee or a body or group of which the employee is a member, the employee shall not participate in the consideration of the matter. If such employee is in attendance at such meeting, he or she shall publicly disclose a conflict of interest to the body or group prior to any determination of the matter.

(c) Reserved.

(d) Certain classifications of employee may be required by a department director to report all gifts received from any person, business entity or organization. An employee in a classification so designated by a department director shall report all gifts, including the estimated amount of the gift and the source, on April 30 of each year, for the preceding calendar year. The department director shall file with the city secretary a list of the

job classifications required to make this report. Excluded from the requirement are gifts received from relatives within the second degree of consanguinity or affinity, and food and beverages of trivial benefit.

(e) Department directors may require certain classifications of employees to report a list of all real property held legally or beneficially by them. An employee in a classification so designated by a department director shall report all such real property held legally or beneficially by him on April 30 of each year for the preceding calendar year. The department director shall file with the city secretary a list of the job classifications required to make this report.

(f) Department directors shall, in consonance with the foregoing standards, establish by administrative rules or regulations additional requirements for the ethical conduct of salaried municipal employees, or classifications of such employees, within their respective departments. Such administrative rules or regulations shall be approved by the mayor and placed on file with the city secretary and the applicable department director.

(g) The term "*salaried municipal employee*," as used in this section, shall include civil service employees and non-civil service employees. (Code 1968, § 12-183; Ord. No. 75-1054, § 1, 6-18-75; Ord. No. 75-2242, §§ 1, 2, 12-17-75; Ord. No. 82-862, § 1, 5-19-82; Ord. No. 93-1480, § 1, 11-17-93; Ord. No. 05-91, § 1, 1-25-05)

Cross reference—Ethics and financial disclosure, § 18-1 et seq.

Sec. 14-184. Carrying of dangerous weapons while on duty or on city property.

(a) All employees, except those who are required to do so in the performance of their official duties, are prohibited from carrying dangerous weapons while on duty or while on city property. Possession alone is "carrying" for the purpose of this rule, no transporting of the weapon is necessary. Further, possession includes all enumerated weapons within the employee's control, either on

his or her person or in his or her vehicle. Those weapons which are specifically prohibited include:

- (1) Any instrument readily capable of inflicting serious bodily injury by striking a person with the instrument, including but not limited to:
 - a. Blackjack.
 - b. Nightstick.
 - c. Mace.
 - d. Tomahawk.
 - e. Other instruments which are readily capable of but not specifically designed to cause serious bodily injury.
- (2) Any explosive which is capable of inflicting serious bodily injury, death, or substantial property damage.
- (3) Any device designed, made or adapted to expel a projectile through a barrel by using the energy generated by an exploding or burning substance, by compressed air or gases or by any device readily convertible to that use, including but not limited to:
 - a. Rifles.
 - b. Shotguns.
 - c. Handguns.
 - d. Machine gun.
 - e. Short-barrel firearm.
 - f. Hunting guns.
 - g. Antique guns.
- (4) Any bladed hand instrument that is capable of inflicting serious bodily injury by cutting or stabbing a person, including but not limited to:
 - a. Any jackknife with a blade over three inches.
 - b. Throw-blade knife.
 - c. Dagger, including dirk, stiletto, poniard, etc.
 - d. Bowie knife.
 - e. Sword.

f. Spear.

g. Switchblade knife.

(b) Violation of this rule will subject the employee to disciplinary action up to and including indefinite suspension.

(Code 1968, § 12-184; Ord. No. 76-141, § 1, 2-3-76; Ord. No. 91-1449, § 1, 10-9-91)

Sec. 14-185. Removal because of medical impairment.

(a) This section provides the exclusive procedure for determining whether an employee who is not subject to chapter 143 of the Local Government Code is sufficiently physically or mentally fit to continue the employee's duties or assignment.

(b) As used in this section, the terms "reasonable accommodation" and "undue hardship" shall have the same meaning as those terms appearing in the Americans with Disability Act of 1990 (42 U.S.C. section 1210 et seq.) enacted by Congress on July 29, 1990 and as defined by regulations issued under it by the United States Equal Employment Opportunity Commission.

(c) Whenever an employee has a known disability, the department director shall be responsible for restructuring the employee's duties and responsibilities as a reasonable accommodation so long as the employee can perform the essential job functions of his or her position. Whenever a question exists whether the employee is sufficiently physically or mentally fit to continue the employee's essential job functions, whether or not the employee is on leave of absence, upon receiving a written order by the department director, the employee shall submit to the civil service commission a report from the employee's personal physician, psychiatrist, or psychologist, as appropriate. If the report by the employee's personal physician, psychiatrist, or psychologist establishes that the employee is unable to perform the essential job functions of the employee's position, the department director shall attempt to make a reasonable accommodation by transferring the employee to another vacant position in the department that the employee can perform. If reasonable accommodation cannot be made within the department, then the department director shall

notify the human resources director, who shall institute a city-wide search for available positions. The human resources director shall make a report and recommendation to the civil service commission, and the commission shall hold a hearing to determine whether a reasonable accommodation for the employee's disability can be made either in the employee's current position or by transfer to another available position. If the commission determines that a reasonable accommodation can be made, it shall enter an order changing the duties of the employee's current position, reclassifying the employee's position, or transferring the employee to another available position. The commission shall not transfer the employee to another department if there is a vacancy in the employee's department that the employee is capable of performing with reasonable accommodation. If the commission determines that no reasonable accommodation can be made and that the employee will not be able to resume his or her essential job functions within a reasonable period of time, the commission shall enter an order removing the employee from active employment with the city; however, such order shall not prejudice the employee's ability to seek re-employment with the city in the future, should there be a change in the employee's medical condition.

(d) If the commission, the department director, or the employee questions the report, the commission may appoint a physician, psychiatrist, or psychologist, as appropriate, to examine the employee and to submit a report to the commission, the department director, and the employee.

(e) If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the personal physician, psychiatrist, or psychologist, as appropriate, the commission may appoint an independent three-member board composed of a physician, a psychiatrist, and a psychologist or any combination, as appropriate, to examine the employee. The board shall submit to the commission a written report of its finding regarding whether employee is sufficiently physically or mentally fit to continue the person's essential job function. The commission, at its next regularly scheduled meeting after the date it receives the report of the board, shall

determine whether the employee is sufficiently physically or mentally fit to continue the assignment. The commission shall hold a hearing to make the determination of fitness and reasonable accommodation as is provided in subsection (b) above and enter an order accordingly.

(f) The employee shall be responsible for paying the cost of the services of the employee's personal physician, psychiatrist, or psychologist, as appropriate. The city shall pay all other costs. (Ord. No. 93-27, § 1, 1-6-93; Ord. No. 96-1290, § 19, 12-4-96; Ord. No. 05-91, § 1, 1-25-05)

Secs. 14-186, 14-187. Reserved.

DIVISION 16. RULE 16. APPEALS, HEARINGS AND INVESTIGATIONS

Sec. 14-188. Right of appeal; correction of improper disciplinary action.

(a) Any regular, permanent employee in the classified service who believes he has been unjustly indefinitely suspended, retired, demoted, transferred, or reduced in any pay may file an appeal with the commission in the same manner as prescribed in section 3 of article Va of the City Charter pertaining to an appeal and hearing.

(b) No disciplinary action shall be taken by the commission, the mayor, a supervisor, or department director against an employee because of membership in any political, religious, or fraternal organizations. And if the commission finds a disciplinary action has been taken for these reasons, the employee shall be reinstated immediately in his position and be reimbursed for any loss of pay occasioned by such action. (Code 1968, § 12-188; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-189. Investigations generally.

If, at any time, there is brought to the attention of the commission a condition whereby it appears that an injustice has been done an employee in the classified service with respect to his position or duties in the service of the city, the commission is vested with authority to investigate the facts, and if it finds the employee is entitled to relief, it shall make such appropriate order, after review,

as will grant the relief to which the employee is entitled, and its finding thereon shall be final; provided, however, that in any instance herein mentioned the commission shall first direct, in writing, the attention of the mayor to the purported injustice and take no action thereon for a period of ten days following delivery of such notice, and only then in the event it finds that the injustice as to such employee has not been corrected by the mayor.

(Code 1968, § 12-189)

Sec. 14-190. Right to counsel at hearings.

Any person appearing at a hearing as a party to the cause being heard shall be entitled to legal counsel, but this fact shall not be construed to mean that such representation is necessary.

(Code 1968, § 12-190)

Sec. 14-191. Power to administer oaths and require attendance of witnesses and production of records.

In the course of any hearing, investigation, or tests of fitness conducted under the provisions of these rules and regulations, the commission and any other person authorized by it as its representative for such purposes shall have the power to administer oaths, to subpoena, and to require the attendance of witnesses within the county and the production by them of books and papers pertinent to any matter of inquiry, and to examine such witnesses under oath, in relation to any matters properly involved in such proceedings.

(Code 1968, § 12-191)

Sec. 14-192. Refusal to testify.

If any officer or employee in the classified service shall wilfully refuse on any grounds to testify or to answer any question relative to the matter being heard by the commission, such refusal shall constitute sufficient grounds for either suspension or discharge, and the commission may recommend to the mayor the suspension or discharge if, in its judgment, such disciplinary measure is advisable. Any employee indefinitely suspended for refusing to testify before the civil service commission shall have no right of appeal.

(Code 1968, § 12-192)

Sec. 14-193. Investigations on commission's own initiative.

The commission may, upon its own initiative, make such inquiries and investigations as it may deem to be warranted regarding the administration and effect of the provisions of article Va and of ordinances and rules adopted in accordance therewith and to make such recommendations to the mayor, or take such other action as in its judgment is warranted in the premises.

(Code 1968, § 12-193)

Sec. 14-194. Hearings to conform to Charter.

All hearings shall be held in conformity with Charter provisions covering civil service hearings.

(Code 1968, § 12-194)

Secs. 14-195—14-199. Reserved.

DIVISION 17. RULE 17. RECORDS, REPORTS, ETC.

Sec. 14-200. Official roster.

The director shall provide and maintain a complete official record of employees, showing for each employee his name, address, classification, rate of pay, changes in any of these, and such other information as he may deem desirable. The form and manner in which such information shall be maintained shall be determined by the commission.

(Code 1968, § 12-200)

Sec. 14-201. Report of change in employee's status.

Every temporary or permanent change in the status of employees in the classified service shall be reported to the director at such time and in such form, together with such supporting or pertinent information, as the commission may prescribe.

(Code 1968, § 12-201)

Sec. 14-202. Personnel files generally.

There will be only one official personnel file maintained on each employee of the city and that file shall be maintained in the custody of the director. Any action of any nature pertaining to any employee shall be forwarded to the director for proper filing.

(Code 1968, § 12-202)

Sec. 14-203. Review of employee files.

(a) Any department director or designated supervisor of the city may, upon request, review any file of any employee in his respective department, but shall not be allowed to review the file of an employee of another department, unless consideration is being given to the transfer of that employee from one department to another department. All employee files shall be reviewed under the supervision of an employee of the human resources department, and no files shall be allowed to be taken from the human resources department. Information from any file of any employee of the city may be released to persons not employees of the city only at the discretion and under the supervision of the director.

(b) The names of special investigators or special employees who may be temporarily employed by the city and whose usefulness would be impaired were their identity disclosed, and the confidential reports on any applicant, eligible, or employee are to be held as confidential data and are to be guarded accordingly.

(Code 1968, § 12-203; Ord. No. 96-1290, § 20, 12-4-96; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-204. Preservation of records.

Roster cards or records, payroll records, minutes of the commission meetings, and eligible records shall be kept permanently. Records pertaining to any examination, including correspondence, applications, and examination papers with passing grades, shall be preserved for at least two years after the establishment of the eligible list, after which period of time they may be destroyed if deemed by the commission to be of no further value. Such papers shall be made a part of the permanent files of individuals who become employees of the city in the interim. The papers and

records of those who do not make a passing grade may be destroyed after 60 days, computing from the date the eligible list is created, but in no event shall these cards, papers, or records be removed meanwhile from the possession of the commission.

(Code 1968, § 12-204)

Secs. 14-205—14-209. Reserved.

**DIVISION 18. RULE 18. PAYROLL
PROCEDURE**

Sec. 14-210. Automated payroll system.

(a) The finance and administration department, central payroll division has authority for maintaining the automated payroll system and for maintaining the integrity of data therein. However, no payroll transaction that is made necessary by the hiring, terminating, or change in the rate of pay for an employee, when such transaction is used to generate payroll warrants for employees of the city shall be entered into the payroll data base unless and until the transaction has been audited by the controller and delivered to the finance and administration department, central payroll division, signifying that such audit has been conducted.

(b) The finance and administration department, central payroll division has authority for preparing all necessary payroll system reports, including payroll warrants. However, the city controller and the director of finance and administration shall not issue any warrant or order in payment of any salary or compensation to any person for filing or holding a classified position unless either the payroll, warrant, or check for that work bears the certification of the commission, that the persons named thereon are correctly named and titled, at the legal rate of pay, and were appointed or employed in accordance with the provisions of these rules and regulations. Subsequent to such certification and upon receipt of the payroll warrants, the city controller has exclusive authority for verifying, signing, and distributing the warrants to department directors and their designees.

(Code 1968, § 12-210; Ord. No. 86-321, § 1, 3-5-86)

Sec. 14-211. Notice to the controller.

The director shall be responsible for sending to the controller a copy of all forms and certificates affecting the status and rates and amounts of salary and compensation of all employees.
(Code 1968, § 12-211)

Secs. 14-212—14-216. Reserved.

DIVISION 19. RULE 19. VALIDITY OF
RULES

Sec. 14-217. Effect of invalidity of part.

If any part of these rules and regulations is held by competent authority to be invalid, each and all of the other part or parts thereof not so held shall continue in full force and effect as though such invalid part had not been included herein.
(Code 1968, § 12-217)

DIVISION 20. RULE 20. DISCIPLINARY
ACTION—CITY MARSHALS AND AIRPORT
POLICE*

Sec. 14-218. "Officer" defined.

For the purposes of division 20, the term "*officer*" shall mean those employees who are employed and classified as city marshals in the municipal court administrative department, or any successor to such department or airport police officers in the aviation department.
(Ord. No. 86-1836, § 1, 10-21-86)

Sec. 14-218.1. Indefinite suspensions of city marshals and airport police officers.

(a) Whenever the mayor, pursuant to section 14-182, indefinitely suspends an officer who is entitled to civil service protection under Texas Revised Civil Statutes Annotated, article 1269m, the mayor shall, within 120 hours thereafter, file a written statement with the commission, giving

*Cross references—Administration generally, Ch. 2; officers and employees, § 2-21 et seq.; ethics and financial disclosure, Ch. 18; investigation of employee misconduct (police officers and firefighters), § 34-160 et seq.

the reasons for such suspension, and immediately shall furnish a copy thereof to the officer affected by such act, said copy to be delivered in person to such suspended officer by said department director or his representative. Said order of suspension shall inform the officer that he has ten days after receipt of a copy thereof within which to file a written appeal with the commission. The commission shall hold a hearing and render a decision in writing within 30 days after it receives said notice of appeal. Said decision shall state whether or not the suspended officer shall be permanently or temporarily dismissed from his department or be restored to his former position or status in the classified service in the department. In the event that such suspended officer is restored to the position or class of service from which he was suspended, such officer shall receive full compensation at the rate of pay provided for the position or class of service from which he was suspended for the actual time lost as a result of such suspension, it being further provided that the commission may assess a temporary suspension or other discipline in lieu of an indefinite suspension.

(b) The written statement provided above to be filed by the mayor with the commission shall not only point out the civil service rule alleged to have been violated by the suspended officer, but shall contain the alleged acts of the officer that the mayor contends are in violation of the civil service rules. It shall not be sufficient for the mayor merely to refer to the provisions of the rules alleged to have been violated, and in case the mayor does not specifically point out the act or acts complained of on the part of such officer, it shall be the duty of the commission promptly to reinstate such officer. In any civil service hearing hereunder, the mayor is hereby restricted to the original written statement and charges, which shall not be amended, and no act or acts may be complained of by said mayor which did not happen or occur within six months immediately preceding the date of suspension by the mayor. No officer shall be suspended or dismissed by the commission except for violation of the civil service rules, and except upon a finding by the commission of the truth of the specific charges against such officer.

(c) In the event the commission orders that such suspended officer be restored to his position as above provided, it shall be the duty of the department director immediately to reinstate him as ordered, and in the event the department director fails to do so, the officer shall be entitled to his salary just as though he had been regularly reinstated.

(d) In the event such department director willfully refuses to obey the orders of reinstatement of the commission, and such refusal persists for a period of ten days, it shall be the duty of the mayor to discharge such department director from his employment with the city.

(Ord. No. 86-1836, § 1, 10-21-86; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-218.2. Disciplinary suspensions of city marshals and airport police officers.

The head of either the municipal courts administrative department or the aviation department shall have the power to suspend any officer under his jurisdiction or supervision for disciplinary purposes for reasonable periods, not to exceed 15 days; provided that in every such case, the department director shall file with the commission within 120 hours, a written statement of action, and the commission shall have the power to investigate and to determine whether just cause exists therefor. In the event the department director fails to file said statement with the commission within 120 hours, the suspension shall be void and the officer shall be entitled to his full salary. The commission shall have the power to reverse the decision of the department director and to instruct him immediately to restore such officer to his position. In the event such department director refuses to obey the order of the commission, then the provisions with reference to salaries of the officers and to the discharge of the department director as well as other provisions of section 14-218.1 pertaining to such refusal of the department director shall apply.

(Ord. No. 86-1836, § 1, 10-21-86; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-218.3. Appeal by city marshals and airport police officers.

(a) An officer may appeal an indefinite suspension, a suspension, a promotional passover, or a recommended demotion to the commission or an independent third party hearing examiner.

(b) In order for an officer to appeal, it shall only be necessary for him to file, within ten days with the secretary of the commission, a written statement denying the truth of the charges as made, a statement taking exception to the legal sufficiency of such charges, or a statement alleging that the recommended action does not fit the offense or alleged offense and in addition, asking for a hearing by the commission. The officer shall also include in the statement whether he is requesting a hearing before the commission or an independent third party hearing examiner. In hearing an appeal under this section, an independent third party hearing examiner shall act in the same capacity as the commission.

(Ord. No. 86-1836, § 1, 10-21-86)

Sec. 14-218.4. Appeal to district court.

In the event any officer is dissatisfied with the decision of the commission, he may, pursuant to article 1269m, Texas Revised Civil Statutes Annotated, and within ten days after the rendition of such final decision, file a petition in the district court, asking that his order of suspension or dismissal be set aside, and that he be reinstated in the department. Such cases shall be advanced on the docket of the district court and shall be given preferential setting over all other cases. An officer who elects to appeal to an independent hearing examiner waives all rights of appeal to district court except as provided by section 16c(f) to article 1269m.

(Ord. No. 86-1836, § 1, 10-21-86)

Sec. 14-218.5. Causes of dismissals and suspensions.

No officer shall engage in, or be involved in, any one of the following acts or conduct and the same shall constitute cause for the removal from service or the suspension of an officer:

- (1) That the officer has been convicted of a criminal offense or of a misdemeanor involving moral turpitude.
- (2) That the officer has been guilty of an immoral or criminal act.
- (3) That the officer has willfully, wantonly, or through culpable negligence been guilty of brutality or cruelty to an inmate or

- prisoner of the city institution or to a person in custody, provided the act committed was not necessarily or lawfully done in self-defense, or to protect the lives of others, or to prevent the escape of a person lawfully in custody.
- (4) That the officer has violated any of the provisions of the Charter of the City of Houston or has violated any of the provisions of the civil service rules and regulations for municipal employees, or the rules or orders of the municipal courts administrative or aviation departments.
 - (5) That the officer has been guilty of an act that amounts to an act of insubordination, or to disgraceful conduct, whether such act was committed while on duty or off duty.
 - (6) That the officer has been guilty of incompetency or inefficiency in the performance of the duties of his position.
 - (7) That the officer has been guilty of drinking intoxicants or the use of intoxicants while on duty, or being intoxicated while off duty.
 - (8) That the officer has been absent from duty without leave contrary to the rules of the commission, or has failed to report after leave of absence has expired, after such leave of absence has been disapproved or revoked and cancelled by the director of the department and the commission; provided, however, that if such absence or failure to report is excusable, the commission or the mayor may revoke such discharge.
 - (9) That the officer has failed to pay or make reasonable provisions for future payment of his just debts due or owing by him, causing thereby annoyance to his superior officer or scandal to the service.
 - (10) That the officer has been wantonly offensive in conduct or language towards the public or toward city officials or officers or employees, or shows discourtesy to the public or to fellow employees while said officer is in line of duty.
 - (11) That the officer has been guilty of any conduct unbecoming to an officer of the City of Houston.
 - (12) That the officer has willfully shown lack of good moral character.
 - (13) That the officer has violated any lawful and reasonable direction made and given by his superior officer, where such violation or failure to obey amounts to an act of insubordination or a breach of proper discipline, or resulted or reasonably might be expected to result in loss or injury to the City of Houston, to the public, or to the prisoners or wards of the City of Houston.
 - (14) That the officer has been guilty of neglect of duty.
 - (15) That the officer has been guilty of conduct which was prejudicial to good order of the municipal courts administrative or aviation departments of the City of Houston.
 - (16) That the officer has been guilty of shirking duty or has shown cowardice while in the line of duty.
 - (17) That the officer has been habitually tardy in reporting for duty or absent frequently from duty during regular working hours, or has refused to perform a reasonable amount of emergency work after working hours when directed to do so by his superior officer or department director.
 - (18) That the officer has been wantonly careless or negligent in the care and handling of the property and equipment of the City of Houston.
 - (19) That the officer has been induced or has attempted to induce an officer or employee in the service of the city to commit an unlawful act or to act in violation of any lawful and reasonable departmental or official regulation or order; or has taken any fee, gift, or other valuable thing in the course of his work or in conjunction with it, for his personal use from any citizen, when such fee, gift, or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other citizens.

(20) That the officer has solicited, accepted, or has agreed to accept any money, service or other thing of value from any person in exchange for the officer's retirement.

(21) That the officer has directly or indirectly given, delivered or paid, or offered or promised to give, deliver or pay any money, service, or other valuable thing to any person for or on account of, or in connection with his promotion.

(Ord. No. 86-1836, § 1, 10-21-86; Ord. No. 05-91, §§ 1, 6, 1-25-05)

Sec. 14-218.6. Demotion of city marshals and airport police officers.

(a) By his initiative pursuant to the City Charter and section 14-182, or upon the recommendation of the head of the municipal courts administrative department or aviation department, the mayor may recommend in writing to the commission that an officer be demoted to a lower rank, giving the reasons therefor, and requesting that the commission make such order of demotion.

(b) A true copy of such recommendation shall be immediately provided, in person, to the officer to be affected by such demotion. If an officer desires to exercise his right to have the recommended demotion heard by a third party hearing examiner as provided by section 14-218.3., he shall so inform the commission, in writing, within ten days after his receipt of the copy of such recommendation.

(c) Said commission shall have authority to refuse to grant said request for demotion. If, however the commission feels that probable cause exists for said demotion, it shall give such officer ten days' advance written notice to appear before the commission at a time and place specified in said written notice to the officer, and said officer shall have the right to a full and complete public hearing upon such proposed demotion. If the officer has elected to have the recommended demotion heard by a third party hearing examiner, the commission shall refer such recommendation along with the officer's request to the secretary of the commission. The secretary shall immediately

institute the proceedings established for such hearings as provided in section 16c of article 1269m, Texas Revised Civil Statutes Annotated.

(d) No officer shall be demoted without such hearing, unless the officer has accepted, in writing, the terms of the demotion.
(Ord. No. 86-1836, § 1, 10-21-86)

Sec. 14-219. Reserved.

ARTICLE III. SICK LEAVE*

DIVISION 1. GENERALLY

Sec. 14-220. Definitions.

As used in this article, the following words and phrases shall have the meanings ascribed to them in this section unless the context of their usage clearly indicates another meaning:

Actively at work means that the employee is actually performing all the regular duties of his employment at a regularly established business location of the city or another location to which he may be required to travel to perform the regular duties of his employment. Although not actively at work as defined hereinabove, an employee, for purposes of this provision, shall be deemed to be actively at work for compensable sick leave plan or modified sick leave plan benefits purposes on each day of leave compensated as a city benefit, such as each day of a regular paid vacation or holiday, on authorized paid sick or injury leave, on a scheduled non-working off day (exempt employees only), on relief of duty with pay, or on an unpaid absence of 80 consecutive work hours or less. An employee on an unpaid absence in excess of 80 consecutive work hours for any reason will not be considered to be actively at work for sick leave benefits purposes under either plan while on such unpaid absence. Employees serving temporary disciplinary suspensions of 15 calendar days or less shall be considered to be actively at work, but employees serving longer

*Note—See the editor's note at the beginning of this chapter.

term temporary disciplinary suspensions shall not be considered to be actively at work for sick leave benefits purposes under either plan.

Base pay means the employee's current base biweekly or other appropriate rate of pay for his classification, excluding overtime, assignment pay, higher classification pay, shift differential or any additional compensation based upon his normal working hours.

Benefit or benefits means compensation in the form of continuation of salary.

Benefit year means a plan year commencing on September 1 of each calendar year and ending on August 31 of the next calendar year.

Break in service means any termination of employment of any duration for any reason. The term "break in service" shall not include an authorized leave of absence (paid or unpaid) or a temporary disciplinary suspension of any duration.

Compensable sick leave means a benefit payable to an employee only when the employee has available sick leave hours and has been authorized sick leave by the department director because he cannot discharge his regular duties due to a bona fide illness, disease or off duty injury or because the employee requires time off to consult with or receive testing or treatment from a health care provider for the diagnosis or treatment of the bona fide illness, disease or off duty injury.

Compensable sick leave plan means the program of benefits created in division 2 of this article.

Department director means the director of the department to which an employee is assigned or the department director's designee.

Director means the human resources director of the city.

Employee means any permanent or temporary full-time employee of the city in the classified or unclassified service, including firefighters and police officers who are classified under chapter 143 of the Texas Local Government Code.

Frozen days means unused accumulated benefit days that an employee who was employed prior to September 1, 1985, had accrued as of August 31, 1985, through the city's former sick leave plan as provided under former section 14-169 of the City Code which was repealed effective September 1, 1985.

Full-time means regularly assigned to work not less than 40 hours per week.

Modified sick leave plan means the program of benefits created in division 3 of this article.

Part-time means regularly assigned to work less than 40 hours per week.

Sick leave means time off authorized at the discretion of an employee's department director for a bona fide illness, disease or off duty injury. Sick leave is compensable as a benefit if the employee has available compensable sick leave plan or modified sick leave plan hours at the time leave is taken. Sick leave may be authorized as uncompensated if the employee has no compensable sick leave plan or modified sick leave plan hours available.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96; Ord. No. 96-1290, § 21, 12-4-96; Ord. No. 05-91, §§ 1, 8, 1-25-05)

Sec. 14-221. Application.

The provisions of this division shall apply to employees who are covered by either the compensable sick leave plan or the modified sick leave plan. No employee may be covered by both plans. Sick leave benefits will not be provided for persons who are employed by the city on a part-time basis or to emergency employees.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96)

Sec. 14-222. Outside employment.

No employee shall engage in any outside employment on any day for which the employee has requested or received compensable or uncompensated sick leave or workers' compensation benefits with or without salary continuation. Approval of outside employment pursuant to applicable civil service regulations and department policies

shall not be construed as authorizing an exception to the foregoing prohibition. A violation of this section shall be grounds for appropriate disciplinary action, including indefinite suspension. (Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96)

Sec. 14-223. Off days, holidays.

Benefits may only be utilized and will only be charged for days and hours upon which an employee is regularly scheduled to work. Benefits will not be provided for any extra work days or work hours to which an employee may have been assigned to work on an overtime basis.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96)

Sec. 14-224. Benefit amount.

When utilized by an active employee for a bona fide illness, disease or off duty injury, compensable sick leave plan or modified sick leave plan benefits will be computed for payment purposes on the basis of the employee's then current base pay plus any permanent pay components, such as longevity pay, assignment pay or bilingual pay to which the employee is regularly entitled, regardless of whether charged to available sick leave time allowances or charged to frozen days (in the case of employees whose service commenced prior to September 1, 1985, who may have frozen days available).

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96)

Sec. 14-225. Coverage, transitional provisions.

(a) The modified sick leave plan is a closed enrollment plan that is available only to those employees who have been employed by the city since on or before August 31, 1985, without a break in service and who did not elect to convert to the city's former income protection plan as authorized by law in 1985. Other employees eligible for sick leave benefits, including members of the former income protection plan and persons hired or rehired following a break in service on or after September 1, 1985, shall be members of the compensable sick leave plan.

(b) Employees who are rehired following a break in service shall be members of the compensable sick leave plan and shall be treated in all respects as new employees thereunder, unless entitled to restoration of modified sick leave plan membership or restoration of other benefits following a layoff or a military leave as provided by law or by civil service regulations.

(c) The modified sick leave plan shall remain unaffected by the creation of the compensable sick leave plan. An employee who is a member of the modified sick leave plan shall continue to accrue benefits as set forth in division 3 of this article for so long as he remains continuously employed by the city without a break in service. The value of frozen days for a modified sick leave plan member determined as of August 31, 1985, under former section 14-225(a) of the City of Houston Code of Ordinances shall apply to his payment upon termination pursuant to section 14-233 or 14-244 of this Code, as applicable; however, frozen days shall be payable as provided in section 14-224 of this Code when utilized by an active employee for authorized compensable sick leave.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 85-1336, § 1, 7-1-35; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-226. Injury in course and scope of employment, workers' compensation benefits and salary continuation.

(a) In a circumstance in which an employee is injured in the course and scope of performing his duties on behalf of the city, the employee's department director may grant the injured employee an injury leave of absence not to exceed 12 months' duration. An employee who qualifies for workers' compensation income benefits under state law shall be paid in accordance with applicable state law for supplemental income or other benefits for which the injured employee may be eligible. In addition to statutory workers' compensation benefits, an injured employee may be paid supplemental salary continuation in an amount not to exceed in the aggregate the maximum of his base salary plus any permanent pay components, such as longevity pay, assignment pay or bilingual pay,

to which the employee is regularly entitled. Salary continuation may only be paid in accordance with rules and terms promulgated by the mayor as required elsewhere herein.

(b) Salary continuation benefits provided under this section shall not be charged to the available compensable sick leave plan time allowances or to the modified sick leave plan balance otherwise authorized in these provisions for compensable sick leave.

(c) If, at the end of the first 12-month period of injury leave, the employee is still not able to return to full-time employment but medical prognosis indicates that the employee will be able to resume full-time employment following an additional period of treatment and/or convalescence, the city council may, upon the request of the department director with the concurrence of the director and the mayor, grant additional leaves of absence at full or reduced pay for a period not to exceed an additional 12 months, to be granted in increments of three months.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-227. Sick leave regulations.

The mayor may, upon recommendation of the director, establish regulations for the accounting of sick leave use and benefits under either plan, for the verification of bona fide illness, disease, off duty injury or medical or other treatment by a health care provider, and for discipline of employees who have excessive absences. Any such regulations shall be consistent with this article and other applicable laws and shall be written so as to ensure that benefits and their use are properly accounted for and that sick leave benefits are limited to eligible uses. The director shall submit accounting regulations to the city controller for approval prior to recommending them to the mayor. With the exception of any provisions that relate to employees who work shifts of unusual duration, the foregoing regulations shall provide, as a qualification for sick leave hereunder, that each absence for an eligible reason after 64 hours within a benefit year, regardless of the duration of the absence, whether taken cumulatively or in a

single event, must be verified by an attending health care provider's statement on a form promulgated by the director. No assessment by telephone will be accepted as a verification required herein. Verification may be required prior to the use of 64 hours of sick leave in any instance of potential abuse of sick leave.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 89-1033, § 1, 7-5-89; Ord. No. 96-1088, § 2, 10-23-96)

Sec. 14-228. Coordination.

All payments for sick leave benefits under this article (whether paid pursuant to the modified sick leave plan, the compensable sick leave plan or as salary continuation under section 14-226 of this Code) shall be subject to coordination with:

- (1) Payments to which an employee is entitled by virtue of any policy or self funded plan of disability insurance benefits provided in whole or in part at the expense of the city; and
- (2) Payments to which an employee is entitled by virtue of any state or federally provided or mandated benefit program including, but not limited to, state workers' compensation benefits and federal social security benefits.

The coordination shall extend to payments made thereunder for the purpose of compensating an employee for lost wages or lost capacity to earn wages, but it shall not extend to payments expressly made thereunder for the reimbursement of actual medical expenses incurred by an employee. In any instance where such other payments as described in section 14-228(2) are available, then the sick leave compensation benefits under this article shall be reduced by an amount equal to the other benefits that are available to the employee, so that the employee shall not receive more than an amount equal to his base salary plus any other permanent pay components. (Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96)

Sec. 14-229. Use limitations.

Sick leave may be requested for an employee's own bona fide illness, disease, or off duty injury,

or because the employee requires time off to consult with or receive testing or treatment from a health care provider for the diagnosis or treatment of the bona fide illness, disease or off duty injury. Sick leave may not be requested, authorized or compensated for illness, injury or medical care or appointments for any other person, whether a family member or not.

(Ord. No. 96-1088, § 2, 10-23-96)

DIVISION 2. COMPENSABLE SICK LEAVE PLAN

Sec. 14-230. Application.

The compensation benefits provided in this division shall constitute the compensable sick leave plan and shall be available only to those employees who are entitled to coverage hereunder.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96)

Sec. 14-231. Compensable sick leave.

(a) The compensable sick leave plan is created effective September 1, 1996. A member of the city's former income protection plan, which is replaced by the compensable sick leave plan, may be entitled to an initial sick leave time allowance hereunder as provided by section 6 of Ordinance No. 96-1088 and regulations promulgated thereunder. The initial sick leave time allowance, if any, shall be in addition to the biweekly sick leave time allowances received under subsection (b).

(b) A compensable sick leave plan member who is actively at work shall receive a biweekly sick leave time allowance of 2.5 hours per biweekly payroll period up to a maximum of 65 hours per benefit year.

(c) Sick leave may not be compensated unless sufficient unused sick leave time allowances are currently available to the employee at the time of the absence. If sick leave time allowances are not available, any authorized sick leave shall be uncompensated unless the employee elects to use other available benefits, such as vacation, to supplement any deficiency in sick leave time allowances.

(d) In his first full biweekly payroll period that commences in October, each member of the compensable sick leave plan who has used fewer sick leave time allowance hours than he received during the previous benefit year shall be given additional sick leave time allowance hours in an amount equal to the difference between the number of hours received and the number of hours used. However, no additional sick leave time allowance hours shall be given that would cause the employee's available sick leave time allowance hours to exceed 1,040 hours. Once an employee has 1,040 hours of unused sick leave time allowances, the annualized addition for unused hours shall not be provided. The annual addition authorized in this subsection for unused sick leave time allowance hours shall not apply to initial sick leave time allowances provided under subsection (a).

(e) Upon termination of employment, all unused sick leave time allowances in excess of 1,040 hours shall be payable to the employee or to the employee's beneficiaries, as applicable, at the employee's rate of base pay, plus longevity, at the time of termination. The first 1,040 hours of unused sick leave time allowances shall have no value, except when used for compensable sick leave benefits and may not be converted to any other use or benefit, nor shall they be payable upon termination or death of the employee under any circumstances.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 87-1398, § 1, 8-12-87; Ord. No. 96-1088, § 2, 10-23-96)

Sec. 14-232. Personal leave hours.

(a) Compensable sick leave plan members are eligible to receive personal leave hours in accordance with the following schedule:

<i>Hours of Benefits Used in Preceding Benefit Year</i>	<i>Personal Leave Hours Earned</i>
None	24
From one minute to eight hours	16
From eight hours and one minute to 16 hours	8

<i>Hours of Benefits Used in Preceding Benefit Year</i>	<i>Personal Leave Hours Earned</i>
More than 16 hours	None

In order to qualify, an employee must have been employed without a break in service during the preceding full benefit year.

(b) Personal leave hours granted for each benefit year will be awarded as of the first full pay period in October of each succeeding benefit year. Personal leave hours may not be accumulated past August 31 of each benefit year and may only be used during the benefit year in which they are awarded. No compensation of any sort will be granted for personal leave hours that are not timely used during the benefit year awarded.

(c) Personal leave hours may be used in the same manner as vacation and may be taken separately or in conjunction with regular vacation or other authorized leave. Department directors may impose internal regulations, including reasonable advance notice requirements for taking personal leave hours, in order to ensure that working schedules are maintained. However, no department director shall unreasonably continually or arbitrarily deny an employee the right to use earned personal leave hours.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96; Ord. No. 05-91, § 1, 1-25-05)

Sec. 14-233. Frozen days.

(a) Those compensable sick leave plan members who were employed by the city before September 1, 1985, and who have frozen days may utilize them as supplemental compensation in the event of illness or injury and exhaustion of sick leave time allowances available under the compensable sick leave plan. Frozen days may not be utilized for sick leave benefits while compensable sick leave plan time allowances remain available. Also, frozen days may not be utilized to supplement the benefits received through any long term disability policy that may be provided by the city as an adjunct benefit to the compensable sick leave plan.

(b) The value of an employee's remaining frozen days that have not been used as supplemental benefits under subsection (a), above, shall be payable to the employee upon termination of employment with the city, or to the employee's beneficiaries in the event of the death of the employee. Payment under this subsection will be limited to the value of the employee's remaining frozen days that were not used as supplemental benefits; the payment value therefor shall be as calculated as of August 31, 1985, under former section 14-225(a) of the City of Houston Code of Ordinances, regardless of whether the employee is earning a lesser or greater amount at the time of termination.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 87-1398, § 2, 8-12-87; Ord. No. 96-1088, § 2, 10-23-96)

Sec. 14-234. Long-term disability.

The city may, if it so elects, provide an insurance policy or a self funded plan of long term disability coverage for members of the compensable sick leave plan who meet certain eligibility criteria therefor in such form and upon such terms as the city council may, from time to time, elect to offer.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 2, 10-23-96)

Sec. 14-235. Wellness leave.

(a) During each benefit year, a compensable sick leave plan member may take up to eight hours of wellness leave to go to health care providers for examinations and physicals, annual check ups and prospective health screening/testing of any kind in order to ensure that the employee continues to stay in good health or for the purpose of encouraging early detection of potentially debilitating or life threatening illness or diseases that might otherwise be ignored.

(b) Department directors may impose internal regulations, including reasonable advance notice requirements for taking any of such hours, in order to ensure that working schedules are maintained. No department director shall unreasonably refuse to allow such leave, but shall ensure

that the time is taken when mutually beneficial or convenient for both the employee and the department.

(c) Wellness leave taken by compensable sick leave plan members will be payable in the same manner as sick leave, but shall not be regarded as use of sick leave time allowances, nor shall it be regarded as a use of sick leave for other purposes, such as attendance awards.

(d) Unused wellness leave hours may not be carried from one benefit year to the next; remaining unused hours will be canceled on August 31 of each benefit year. No compensation of any sort will be paid or granted for wellness leave that is not timely used.

(Ord. No. 96-1088, § 2, 10-23-96; Ord. No. 05-91, § 1, 1-25-05)

Secs. 14-236—14-239. Reserved.

DIVISION 3. MODIFIED SICK LEAVE PLAN

Sec. 14-240. Application.

The benefits provided in this division 3 shall constitute the modified sick leave plan and shall be available only to those employees who are covered by the modified sick leave plan. The meaning of the word "employee" as used in this division shall be so restricted.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86)

Sec. 14-241. Benefit days—Accrual.

(a) Employees shall receive benefit days at the rate of $1\frac{1}{4}$ eight-hour working days for each full month of employment so that they shall be eligible to receive 15 eight-hour benefit days per benefit year.

(b) Benefit days may be accumulated without limitation.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 86-140, § 1, 2-4-86)

Sec. 14-242. Same—Days charged.

When an employee utilizes an accumulated benefit day for sick or injury leave purposes, it

will be charged to his or her accumulated benefit days on a first-in-first-out accounting basis so that days used during any benefit year will be charged:

- (1) First to frozen days, if any;
- (2) Then to unused days accumulated, if any, from the earliest benefit year and then to unused days accumulated, if any, from each succeeding benefit year until all days earned through the expiration of the last preceding benefit year have been exhausted; and
- (3) Finally to unused days accumulated, if any, during the then-current benefit year.

No further benefits will be paid when all unused accumulated benefit days have been exhausted.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 85-1336, § 2, 7-31-85; Ord. No. 86-140, § 1, 2-4-86)

Sec. 14-243. Same—Annual valuation.

After the conclusion of each benefit year, the director shall determine the number of benefit days accrued during the benefit year that were not utilized during the benefit year, if any, by each employee and the per day value thereof. Such per day value shall be based upon the employee's average daily rate of base pay plus longevity during the benefit year, and it shall be computed by adding an amount equal to the employee's daily rate of base pay plus longevity as applicable for each biweekly city payroll cycle that commenced during the benefit year and dividing that sum by the number of city biweekly payroll cycles that commenced during the benefit year. To the extent that the city may have two or more different biweekly payroll cycles in effect, then the computation for each employee shall be based upon the payroll cycle applicable to that employee. The per day value of the days so determined shall apply to their payment upon termination pursuant to section 14-244 of this Code; however, they shall be payable as provided in section 14-224 of this Code when utilized by an active employee for compensable sick leave plan benefits.

(Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 85-1336, § 3, 7-31-85; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 3, 10-23-96)

Sec. 14-244. Same—Termination benefit.

The combined value of any unused accumulated benefit days will be payable to the employee, or to the employee's beneficiaries in the event of the death of the employee, upon the termination or death of the employee, in the following manner:

- (1) Remaining frozen days, if any, will be payable at their per day value calculated as of August 31, 1985, as established under former section 14-225(a) of the City of Houston Code of Ordinances.
 - (2) Remaining days, if any, from each benefit year elapsed since the inception of this plan (September 1, 1985), will be paid at their per day value as established pursuant to section 14-243 of this Code.
 - (3) Remaining days, if any, from the benefit year in which the employee's employment with the city is terminated will be paid at the employee's daily average rate of base pay plus longevity during the benefit year of termination, to be computed through the biweekly payroll period in which the termination occurs in the same manner provided in section 14-243 of this Code.
- (Ord. No. 84-1962, § 2, 12-19-84; Ord. No. 85-1336, § 4, 7-31-85; Ord. No. 86-140, § 1, 2-4-86; Ord. No. 96-1088, § 3, 10-23-96)

Sec. 14-245. Wellness.

Members of the modified sick leave plan may utilize up to eight hours per benefit year of their accrued benefit days for wellness leave to go to health care providers for examinations and physicals, annual check ups and prospective health screening/testing of any kind in order to ensure that the employee continues to stay in good health or for the purpose of encouraging early detection of potentially debilitating or life threatening illness or diseases that might otherwise be ignored. Even though the wellness time used will be charged to their available benefit balance, it shall not be regarded as a use of sick leave for other purposes, such as attendance awards.

(Ord. No. 96-1088, § 3, 10-23-96)

Secs. 14-246—14-250. Reserved.**ARTICLE IV. MILITARY LEAVES****Sec. 14-251. Definitions.**

As used in this article the following words and terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

Armed forces means the state military forces of Texas and the reserve components of the United States armed forces.

Called to duty means ordered on proper authority to assume active duty status as a full-time member of the military forces during a time of war or a state of emergency for service relating to the war or emergency.

City salary means the employee's regular rate of base pay from the city inclusive of longevity allowances; however, it shall not include any other allowances, incentives, differentials or other compensation ordinarily received by the employee for service to the city.

Director means the human resources director of the city.

Employee means a member of armed forces who is a full-time employee of the city.

Military salary means base pay plus any incentive pay, duty pay or other compensation payable to the employee by the military for full-time service while called up, exclusive of allowances for travel, uniforms and other personal expenses of the employee.

(Ord. No. 90-1329, § 1, 11-7-90; Ord. No. 96-1290, § 22, 12-4-96)

Sec. 14-252. Rights cumulative.

The provisions of this article shall not be construed to abridge any right of compensation or benefits arising under state or federal law or regulations, including those benefits arising under section 431.005 of the Texas Government Code.

(Ord. No. 90-1329, § 1, 11-7-90)

Sec. 14-253. Military leave.

An employee who is called to duty shall be entitled to be placed on military leave upon written application to the director. Each application shall be accompanied by duly authenticated copies of state or federal military orders, and any other documentation reasonably required by the director to establish the employee's right to leave status under this article. Upon receipt of an application and related documents establishing the right to leave status under this article, the director shall place the employee on military leave status.

(Ord. No. 90-1329, § 1, 11-7-90)

Sec. 14-254. Compensation.

(a) An employee who is granted military leave under this article and whose military salary is less than his city salary shall be entitled to compensation for the difference. Such compensation shall not apply to any period prior to the reporting of the employee for the military call up or following the employee's discharge from the call up. In those instances in which an employee is eligible for compensation at full pay under section 431.005 of the Texas Government Code, the compensation hereunder shall not be payable for any period during which the employee is entitled to compensation thereunder.

(b) The compensation payable under this section shall be paid from time to time in accordance with administrative regulations established by the director with the consent of the city controller. Without limitation, such regulations may require that the employee regularly submit proof that he remains on active duty status with the military and the amount of the military salary that is payable.

(Ord. No. 90-1329, § 1, 11-7-90)

Sec. 14-255. Status for other purposes.

The military leave provided under this article shall not be construed to make any employee of the city who is on military leave an active employee of the city during his period of service in the armed forces while called up. For all other purposes the employee shall be regarded as being on leave without pay status entitled to those

rights of restoration of employment and benefits that are provided by applicable state and federal law.

(Ord. No. 90-1329, § 1, 11-7-90)

Sec. 14-256. Time limitation.

The compensation to any employee under section 14-254 of this Code shall be limited to a period of 90 calendar days from the date that the employee is called up, unless the city council determines, based upon the nature of the war or emergency, the number of city employees involved and the potential costs to the city, that the benefits should be extended.

(Ord. No. 90-1329, § 1, 11-7-90)